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THE
EDITOR *of this* EDITION
TO THE
READER.

IT may be proper to inform the Reader, that the Annotations, and Notes added to this Edition, are chiefly of two Kinds, and collected by two ſeveral Hands, *viz.* The one conſiſting only of References to the Year-Books, and other printed Reports, are ſet in the Margin, and were collected by Sir WADHAM WINDHAM, who was conſtituted one of the Judges of the King's Bench *Anno* 1660. The other being very curious Notes and Obſervations on the moſt remarkable and uſeful Writs and Diviſions of the Book, were collected and digeſted into Method, by that great and good Judge Sir MATTHEW HALE, (who the 7th of *November* 1660. was made Lord Chief Baron of the Exchequer, and the 18th of *May* 1671. was conſtituted Lord Chief Juſtice of the King's Bench) and as theſe illuſtrate and explain many doubtful and abſtruſe Caſes and Points in the Original, ſo the whole may well be denominated, Sir *Matt. Hale's Commentary* on *Fitz-Herbert's Natura Brevium.*

As to the Subject Matter of theſe Annotations or Commentaries, the Reader may obſerve Sir MATTHEW's chief Regard therein was to illuſtrate and explain ſuch Writs as relate to the following Particulars:

I. To the Church and Church-Men.
II. To the Regal State and Government.
III. To real Rights or Eſtates in Lands or Offices.
IV. To perſonal Rights in Goods and Chattels.
V. To the Method of Proceſſes and Proceedings.

And therefore we find his Annotations larger and fuller on ſuch Writs, as do reſpectively relate to any of theſe Heads.

What remains to be obſerved as to the preſent Edition, is, that it has been carefully examined with the Original, that the References, and Caſes cited have been corrected by the Books referred to; and that the Obſervations and Annotations have been duly placed and diſtributed under their reſpective Paragraphs, with proper Marks referring to the Subject Matter, Word or Sentence to which they do reſpectively relate.

This Book may well be ſaid to contain a complete Body of the Common Law, and that not only in its Theory and Judicial Part; but alſo in its Praxis and Method of Proceedings, from the Forming of the Writ or Action, to the Judgment and Execution had thereupon.

THE
PREFACE
Compoſed by the Reverend JUDGE
Mr. ANTHONY FITZ-HERBERT.

IN every ART and SCIENCE there are certain Rules and Foundations to which a Man ought to give Credit, and which he cannnot deny.

In like Manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a Man ought for to believe very neceſſary for thoſe who will underſtand the ſame Law, eſpecially at the Beginning of their Studies; for upon thoſe Fundamentals the whole Law doth depend. For which Purpoſe, in Time paſt there was compoſed a very profitable Book, called The Regiſter, *which doth contain ſundry Principles, by which he muſt be well inſtructed who would ſtudy the Law. And alſo for that Purpoſe was there compoſed by a Learned Man, a Book called* Natura Brevium, *which Book doth declare and ſet forth the Diverſities and Natures of many Original Writs, with their Proceſs; which Book helped much to the Underſtanding not only of* The Regiſter, *but alſo of the Law of the Land. But becauſe of late Time that Book hath been tranſlated into the*

Engliſh *Tongue, and many Things are therein which are not according to the Law of the Land, and many other Things are omitted which are very profitable and neceſſary for the Underſtanding of the Law; for that Cauſe is this Work compoſed and publiſhed, wherein, if there be any Thing againſt the Opinion of the Sages who have the Adminiſtration of the Laws, the Requeſt of him who hath taken the Pains to make the Treatiſe is, that they would correct and amend the ſame, as they ſhall ſee good, according to the Law.*

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FITZ-HERBERT
HIS
Natura Brevium.

Writ of Right Patent.

A THE Natures of the original Writs are to be ſhewed and declared, according to the Manner and Form as they are in Order written and ſet down in the Regiſter, which ſhall be expreſſed and ſpecified in Manner following:

And firſt, becauſe the (*a*) *Writ of Right Patent* is in its Nature the higheſt Writ in Law, the Nature of that Writ ſhall be firſt declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, and not of an 40 E. 3. 8.
Advowſon, or of Common; and lieth only of an Eſtate of Fee-ſimple, and Poſt. 5. C.
not for him who hath a leſſer Eſtate, as Tenant in Tail, Tenant in Frank-marriage, or Tenant for Life: For theſe Tenants ſhall not have a *Writ of Right Patent.*

(*a*) *The Proceedings on a* Writ of Right.

1. *The Count or Declaration.*] See *Coke's Entries* 182. The Count in a *Writ of Right* of his own Seiſin; and 23 *E.* 3. 8. a Count that it was his Right and his Heritage, which is thus entred: J. S. *demands againſt* J. N. *the Manor of* D. *as his Right and Inheritance, by the Lord the King's Writ,* &c. *whereof he ſaith he himſelf was ſeiſed as of Fee and Right in Time of Peace, in the Time,* &c. *and offers to maintain that ſuch is his Right,* &c.

2. *The Defence and Miſe, or Iſſue joined.*] The Defence is thus: *And the aforeſaid* A. *comes and defends the Right of the aforeſaid* J. S. *the Demandant, and his Seiſin, when,* &c. *And all,* &c. *and whatſoever,* &c. *and chiefly as concerning the Fee and Right of the Manor aforeſaid, with the Appurtenances.* Or thus: *And thereof he puts himſelf upon the Great Aſſiſe of the Lord the King, and prays that Cognizance may be made, whether he hath greater Right to hold the Manor aforeſaid with the Appurtenances to him and his Heirs, as Tenant thereof by Warranty (if he be Vouchee) as he*

11 Aſſ. 17. *per Curiam,* a Man recovered againſt the Heir by Default, and he brought a *Mortdaunceſter.*

And this Writ lieth properly where a Man is ſeiſed in Fee-ſimple, and an- C
other recovereth the Land againſt him by Default in a *Præcipe quod reddat:*
Now he, who hath loſt by Default, ought to ſue this Writ. Or if a Man
ſeiſed in Fee-ſimple die ſeiſed of ſuch an Eſtate, and a Stranger doth abate, D
and entereth into the Land, and deforceth the Heir; the Heir may ſue this
Writ againſt the Tenant of the Freehold of the ſame Land, or an Aſſiſe of
Mortdaunceſter. *Poſt.* 196.

(*a*) And

he holds the ſame, or the aforeſaid Demandant to have the Manor aforeſaid, &c. *as he above demands.* Or thus: *And ſaith that he hath greater Right to hold,* &c. *And this he is ready to prove by the Body of his free Man, whoſe Name is* J. R. *preſent here in Court, in what Manner ſoever the King's Court here ſhall conſider; and he is ready to prove it by another, if any Evil happens to* J. R. *that he be not preſent; and prays that Cognizance may be made, whether,* &c.

And *Note*; The Order of joining Battle is according to the Form of joining the Miſe, *viz.* That he has the moſt or beſt Right. 3 *H.* 6. 55. *Nu.* 7. And ſometimes by his Defence he ſays, *And he is ready to defend his Right by his Body.* 30 *Ed.* 3. 20.

Note; Tender of the Demy or Half Mark is when the Miſe or Iſſue on the Grand Aſſiſe is joined before. 22 *Ed.* 3. 8. See *Litt. Sect.* 514.

Note alſo; The Form of the Writ of Right is recited after the Count of the Demandant, for the Tenant to make his Defence *de novo,* and thereupon to vouch or plead in Bar; and ſo if the Demandant replies to the Bar, the Tenant ſhall make a Defence *de novo,* and plead to the Title. 21 *H.* 6. 26. per *Newton.*

3. *The Trial of the Grand Aſſiſe.*] *Note, Herle* granted an Inqueſt inſtead of the Grand Aſſiſe, for that the Tenements in Queſtion were of ſmall Value; and a Writ iſſued to the Sheriff to elect four Men, who were to elect an Inqueſt in Nature of the Grand Aſſiſe. 7 *Ed.* 3. 65. But it ſeems this was done by Conſent; for otherwiſe it cannot be ſo done, although the Demandant prays it. 22 *Ed.* 3. 8.

The Electors ought to elect ſixteen Knights *gladio cinctos* from amongſt themſelves and others; and if there are not ſo many Knights in that County, then by the Aſſent of Parties they may elect as many valiant Serjeants (*i. e.* Eſquires) by whom they ſhall elect three (four) Knights from amongſt themſelves, and the Remainder of the Serjeants, and Proceſs ſhall iſſue againſt all of them by *Venire facias.* 26 *Ed.* 3. 57.

Yet if at the firſt Day any of the four Knights makes Default, a *Habeas Corpus* ſhall iſſue, and not a Summons. *Dyer* 79.

Note; The Writ to the ſaid Electors is, *That they chuſe of themſelves and others twelve,* &c. yet not leſs than ſixteen ſhall paſs in a Grand Aſſiſe, *Dyer* 98. and if there are not ſo many Knights in the ſame County, they ſhall elect them of the next County. See 33 *Ed.* 1. *Fitz. Trial* 97.

See the whole Form of joining Battle in 29 *Ed.* 3. 12. but in a better Form 30 *Ed.* 3. 20. And ſee there an Imparlance for the Demandant, after Battle tendred by the Tenant; and the different Forms of joining Battle between the Parties and the Champions. See 1 *H.* 6. 7. 13 *El. Dyer* 301.

4. *The Proceſs in a Writ of Right*] In a Writ of Right the Tenant is not demandable till the fourth Day after the Return, except it be after the Miſe or Iſſue joined; for in that Caſe he is demandable, and ought to appear on the firſt Day. 24 *Ed.* 3. 28. 29 *Ed.* 3. 18. *per Thorpe.* See alſo 1 *Ed.* 3. 1. where, after the Miſe joined, the Parol was put without Day by the King's Demiſe; and at the Reſummons, the Tenant was demanded the firſt Day, and for that he made Default, his Default was recorded, and on the fourth Day the Demandant pray'd Seiſin, and had the Grand Cape.

The Demandant, after the Miſe joined by Battle or Grand Aſſiſe, ought to offer himſelf in Perſon, or by Attorney, with his Champion, &c. and recite the Words of the Miſe the firſt Day after the Miſe joined, and pray that the Tenant be demanded; otherwiſe a Nonſuit ſhall be awarded at the fourth Day. 42 *Ed.* 3. 15. But if after the Miſe joined a Petit Cape be awarded returnable *quinden' Mich',* &c. it is ſufficient for the Demandant to offer himſelf the fourth Day. *Dyer* 103.

An *Eſſoin de malo lecti* lies only in a Writ of Right; and *Note,* in this Writ the Tenant cannot join the Miſe by Attorney; and therefore, though the Tenant has an Attorney, yet he may be eſſoined. 19 *H.* 6. 61.

Note; The Proceſs for the Grand Aſſiſe is a *Venire facias,* and not a *Habeas Corpus*; and yet if they do not appear thereon, they ſhall be taken. *Dyer* 270.

5. *The*

E (*a*) And this Writ ought to be brought againſt him who hath a Freehold at leaſt in the Land, and not againſt Tenants for Years, Tenants by Statute-merchant, Tenants by *Elegit*, nor Tenants by Statute-ſtaple; but ought to be brought againſt thoſe Tenants who have an Eſtate in Fee-ſimple in the Lands, or an Eſtate-tail, or for Term of Life at the leaſt.

F And this Writ is always Patent, and not Cloſe, as other Writs are. And if the Lands be holden of other Perſons than of the King or of the Queen, then this Writ ſhall be directed unto the Lord himſelf, of whom the Lands or Tenements are ſo holden, if the Lord be not out of the Realm; for then it ſhall be directed unto the Lord's Bailiff; and then the Chancellor of *England* ought to be certified thereof. And if a Man be elected Biſhop, and a *Writ of Right Patent* is to be ſued in the Court of the Manor of the ſaid Biſhop, the Writ ſhall be directed unto the Bailiffs of the Elect, and not unto the elect Biſhop himſelf. And this Writ is as a Commiſſion unto the Lord, or unto the Bailiff of the Manor, that they ſhall do Right. And the Form of the Writ directed unto the Lord himſelf is ſuch: Vide poſt. 2. E.

G Henry *by the Grace of God*, &c. *to* Henry *Earl of* Lancaſter, *greeting: We command you, that without Delay you do full Right to* A. *of* B. *of one Meſſuage and twenty Acres of Land* (*b*) *with the Appurtenances in* J. *which he claims to hold of you by the free Service of one Penny* per Annum *for all Service*; *of which* W. *of* T. *deforceth him*; *and unleſs you will do this, let the Sheriff of* Nottingham *do it, that we may hear no more Clamour thereupon for want of Right. Witneſs*, &c. Vide 2. E.

H And if the Lord be out of the Realm, then the Form of the Writ which ſhall be directed unto his Bailiffs ſhall be ſuch:

The King (*c*) *to the Bailiffs of* H. *Earl of* Derby *of the Honour of* P. *in the County of* Derby, *greeting: We command you, that without Delay you do full Right to* A. *of* B. *of one Meſſuage and twenty Acres of Land, with the Appurtenances in* J. *which he claims to hold of your ſaid Lord by the free Service of doing Suit at the Court of your ſaid Lord, of the Honour aforeſaid in the County aforeſaid, from three Weeks to three Weeks, for all Service*, &c. as above.

I And by that it appeareth, that in a Writ of Right Patent he muſt expreſs by what Services the Lands are holden, *&c.* And if the Lands are holden of the King or of the Queen, as of an Honour, or in Burgage, then the Writ ſhall be directed unto the King's or Queen's Bailiffs, and the Writ ſhall be ſuch:

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5. *The Judgment on a Writ of Right.*] Judgment final is given againſt the Demandant, and afterwards the Grand Aſſiſe is awarded, the Tenant tenders the Demy Mark for the Time, and no Seiſin is found. 22 *Ed.* 3. 8. 34 *Ed.* 3. *Judgment* 256. But if the Seiſin be found, they ſhall inquire further of the Right. 3 *Ed.* 3. *F. Droit* 26. See *Litt. Sect.* 514.

Judgment final was given againſt the Tenants, Baron and Feme, on a Default after the Miſe joined, *viz.* That the Tenant (Demandant) ſhould hold to him and his Heirs, quit of the Baron and Feme, and of the Heirs of the Feme. 22 *Ed.* 3. 17.

(*a*) This Paragraph ſeems to be an Addition to *Fitzherbert*, and is contrary to B. and C. *ſupra*, and *Poſt.* 5 C.

(*b*) *Note*; In ſome Caſes where Land is demanded, the Writ ſhall be *with the Appurtenances.* See 19 *Ed.* 2. *Fitz. Bre.* 844. and ſo of an Advowſon, 5 *Ed.* 3. *Fitz. Bre.* 748.

(*c*) Becauſe, although the Suitors are Judges, yet the Bailiffs ſhall make the Proceſs. *Mich.* 7 *H.* 8. *Rot.* 103. . 2 *Benl. fol.* 5.

Henry *by the Grace of God, King*, &c. *to his Bailiffs of* Lincoln, *greeting: We command you, that without Delay you do full Right to* A. *of* B. *of one Meſſuage with the Appurtenances in* Lincoln, *which he claims to hold of us by the free Service of one Penny* per Annum *for all Service, of which* W. *of* B. *deforceth him, that we may hear no more Clamour thereupon for want of Right*, &c.

And if a Man ſue a *Writ of Right Patent* of Lands or Tenements which are holden by a Knight's Fee, then the Form of the Writ ſhall be: *Of one Meſſuage and ten Acres of Land*, &c. *which he claims to hold of you by the Service of one Knight's Fee for all Service.* K

And the Writ of Right lieth of a Paſſage over the Water of *Thames*, and of Paſture for one hundred Sheep, and of the Rent of one Pound of Ginger, thus: *Of one Meſſuage, ten Acres of Land, nine Shillings Rent, and Paſſage over the River* Thames, *and Paſture for one hundred Sheep, with the Appurtenances in* W. *and of the Rent of one Pound of Ginger, one Pound of Cinnamon, one Roſe, one Pair of gilt Spurs, and of the third Part of one Garden, with the Appurtenances in* N. *which he claims to hold of us by the free Service of himſelf, together with his Partners, finding for us five Ships for our Paſſage at our Command, for all Service*, &c. L.

[2.] And if the Lands of any Lord be in the King for the Nonage of the Heir, and a Writ of Right is to be brought in the Court of the Manor where the King hath committed the Wardſhip of the Lands to another, the Writ of Right ſhall be directed unto the Bailiffs of the Guardian to whom it is committed, or unto the Guardian himſelf, if he hath the Land in Ward in his own Right, and by reaſon of the Seigniory that the Heir is in his Ward. And the Forms of the Writs in the Regiſter are thus: *The King to the Bailiffs of the Guardian of the Land and Heir of* A. *of* B. Or thus: *To the Bailiffs of the Guardian of the Land of* A. *of* B. And this Writ is where the Guardian hath only the Wardſhip of the Land, and not of the Heir, *&c.* And unto the Guardian himſelf the Writ is, *The King to the Guardian of the Land and Heir, greeting: We command you*, &c. *which he claims to hold of the aforeſaid Heir.* And if the Heir hath no Court for the Poorneſs of the Land, that it is of ſo ſmall Value, then the Writ ſhall be directed unto the chief Lord, as *chief Lord*, and not as a Guardian; and then the Writ ſhall ſay, *And which he claims to hold of him*, &c. and ſhall not ſay as Guardian. A.

And it appeareth that a Man ſhall have a Writ of Right of a Knight's Fee; and the Writ ſhall be ſuch:

The King to A. *of* B. *greeting*, &c. *We command you that*, &c. W. *&c. of the Service of one Knight's Fee, with the Appurtenances in* W. *which he claims to hold*, &c. *by the Service of one Pair of gilt Spurs for all Service*, &c. or, *by the Service of finding an Horſeman or Footman to go with you in the Army of* Wales *at your own Expence and Coſt*, &c. *for all Service.* Or thus: *By the free Service of carrying your Writs at your own Expence and your own Coſt within the County, for all Service.* B

And there is an Order ſet in the Regiſter, when a Man demandeth divers Parcels of Land in his Writ which are of divers Natures, which Parcel ſhall be firſt ſpecified in the Writ, and what Parcel ſhall be next unto that, and then what Parcel ſhall be next to that, and ſo of all the Parcels; and that appeareth by the following Paragraph: C

Meſſuage, *Toft*, *Mill*, *Dove-houſe*, *Garden*, *Land*, *Meadow*, *Paſture*, *Wood*, *Heath*, *Moor*, *Soil where Ruſhes do grow*, *Marſh*, *the Soil and Wood where Alders grow*, *the Soil where Broom doth grow*, *Rent:* This is the Order of the Parcels.

8 Aſſ. 1. 17. 16 Aſſ. 46. *See* F. N. B. 123 H. 8 Aſſ. 24. in which Aſſiſe (*Wood*) was put before Paſture, yet good, *v.* 7 *E.*6. *Dyer* 84. 3 Mar. 169.

And if a Man in his Writ will demand twenty Houſes, and ten Acres of Land, and ten Acres of Meadow, and ten Acres of Paſture, and divers other Parcels; and afterwards in the ſame Writ he will demand the Moiety, or the third Part of one Houſe, or of one Acre of Land, or of Meadow, or of Paſture; then the Form of the Writ is, to put in the Beginning of the Writ the whole Parcel, and in the End of the Writ the Moiety or the third Part, *&c.* thus: *That full Right*, &c. *of one Meſſuage*, *one Mill*, *one Garden*, *the Moiety of one Meſſuage*, *of one Acre of Land*, *excepting one Acre of Land in* N. *&c.* ſo as the Exception ſhall always be in the End of the Demand.

D And a Writ of Right may be brought againſt divers Tenants who hold their Lands ſeverally; and then the Form of the Writ is; *The King to* A. B. *&c. We command you that*, &c. *you do full Right to* A. *of twenty Acres of Land with the Appurtenances in* N. *which he claims*, &c. *whereof* F. *deforceth him of ten Acres*, *and* S. *of three Acres*, *and* C. *of ſeven Acres of Land.* And ſo the Word [Land] ſhall be in the End to him that ſhall be ſuppoſed laſt Deforceor, *&c.*

E And if a Writ of Right be brought in the Court of any Biſhop or Abbot, it ſhall be then directed to the ſame Biſhop, thus: *The King*, &c. *to the Venerable Father in Chriſt* William, *by the ſame Grace Archbiſhop of* Canterbury, *Primate of all* England, *greeting: We command you that without Delay*, &c. *which he claims to hold of you by free Service*, &c. 1. G. 3. A.

And if it be directed unto an Abbot, then the Writ ſhall ſay, *Which he claims to hold of you*, &c.

And if in the Time of the Vacation of any Biſhoprick a Writ of Right ſhall be brought in the Court of any Lands which are of the Biſhoprick, which are in the King's Hands by reaſon of the Vacation of the Biſhoprick, then the Writ of Right ſhall be directed unto the King's Bailiff, or unto the Bailiff of him who is the Biſhop elect; and the Form of the Writ is ſuch: *The King to the Bailiffs of* C. *of the Archbiſhoprick of* York, *greeting.* Or thus: *The King to the Bailiffs of* H. (*a*) *Elect of* Lincoln, *&c. greeting: We command you*, &c. *which he claims to hold of the aforeſaid Archbiſhop.* Or thus, if it be directed unto the Bailiffs of the Biſhop elect: *Which he claims to hold of your aforeſaid Lord by Service*, &c. Ante 1. F.

F But the Lord may give Licence unto his Tenant to ſue his Writ of Right in the King's Court, or the Common Pleas, before the Juſtices; and that as well after the Writ purchaſed and returned into the Common Pleas, as before the Writ purchaſed and ſued. And the Form of the Writ, when it ſhall be ſued in the Common Pleas by Licence of the Lord, ſhall be ſuch: *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* C. *one Meſſuage with the Appurtenances in* M. *which he claims to be his Right and Inheritance, and whereof he complains, that the aforeſaid* A. *hath unjuſtly deforced him, and* Licence.

(*a*) For he ought not to be named *Biſhop* till Collation of the Pope, but ſhall be named only Conſecration, not even though he came in by *Elect.* 5 *Ed.* 2. *Fitz. Brev.* 800.

unleſs he will do this, and the aforeſaid C. *ſhall give you Security to proſecute his Suit, then ſummon by good Summoners the aforeſaid* A. *that he be before our Juſtices at* Weſtminſter *on the fifteenth Day of the Holy Trinity, to ſhew why he will not do it: And have you there the Summoners and this Writ. Witneſs*, &c. *Becauſe* I. *the chief Lord of the Fee, hath thereupon remitted to us his Court.* And ſo this Clauſe ſhall be put in the Writ after the *Teſte*, &c. And if this Clauſe be omitted, and the Lord after the Purchaſe of the Writ ſend his Letter to the King that he is contented therewith, it is ſufficient.

Vide 4. D.

[3.] And if ſuch Clauſe, *Becauſe the Lord hath remitted his Court*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his Aſſent, or not. And the Form of the Letter of Licence, which ſhall be certified unto the King, is thus:

A *To the moſt excellent Prince Lord* Henry *by the Grace of God King of* England, *Lord of* Ireland, *and Duke of* Aquitain, *the Biſhop of* Durham *ſendeth greeting, in Him by whom Kings reign and Princes bear Dominion. Becauſe* K. *of* S. *having obtained our Leave, purpoſeth to implead* W. *in your Court before your Juſtices of the Bench by your Writ of Right, of one Meſſuage with the Appurtenances in* J. *which he holds of us, We ſignify to your Royal Highneſs by the Tenor of theſe Preſents, that for this Time we have thereupon remitted to you our Court, ſaving to us otherwiſe the Right of our Seigniory in the like Caſe, if it ſhall happen. In Witneſs whereof we have cauſed theſe our Letters to be made Patent. Dated at* London *the Day, Year*, &c.

B But if the (*a*) Tenant of any Lord ſue ſuch a Writ of Right in the King's Court without ſuch Letter, and recover, it ſeemeth the Recovery is good, and the Lord ſhall not void the ſame nor the Tenant. C Alſo it ſeemeth to ſtand with Reaſon, that if a Man hold of any Lord, as of a Seigniory in groſs, which is not any Manor, for which Seigniory he cannot keep any Court; that then the Tenant ought to ſue ſuch Writ as before in the King's Court, and that the Lord ſhall not have Action, or other Means to annul this Act, becauſe he hath not any Court to hold Plea for that there. And in the End of the Writ may be theſe Words, *Becauſe the Lord hath remitted his Court*, &c.

Præcipe in Capite. Poſt. 5. A.

D But if the Tenant will ſue forth the Writ of *Præcipe in Capite* in the King's Court for ſuch Lands as are holden of another Lord, (*b*) then the Lord ſhall have a Writ out of the Chancery directed unto the Juſtices of the Common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they ſhall proceed no farther on that Plea. For by this Writ the Plea ſuppoſeth the Lands to be holden of the King, and therefore he and his Heirs ſhall be concluded againſt the King for the Tenure, and the ſame ſhall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not ſuppoſe any Tenure in the Writ, and therefore there is great Diverſity. *Tamen quære.*

E And if a Man ſue a Writ of Right directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right ſhall have a Writ directed unto the

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(*a*) Yet ſee 6 *Ed.* 3. 22. He may come in and pray that it be inquired by the Inqueſt, &c.

(*b*) See 6 *Ed.* 3. 16. *Mag. Char. c.* 24. But the Tenant in a Writ of Right ſhall not alledge this by way of Challenge, but only by way of Proteſtation, to ſave an Eſtopple of the Tenure. 38 *Ed.* 3. 31.

Lord, commanding him to hold his Court, *&c.* and if he will not receive the Writ, nor do Right unto him, he may ſue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*; and the Form of a Writ of *Attachment* is ſuch:

Attachment.

The King to the Sheriff, &c. *If* A. *ſhall give you Security*, &c. *then put*, &c. B. *that he be*, &c. *as well to anſwer us as the aforeſaid* A. *wherefore when we commanded the ſaid* B. *by our Writ of Right, that without Delay he ſhould do full Right to the aforeſaid* A. *of one Meſſuage with the Appurtenances in* N. *of which* T. *deforceth him*; *the ſaid* B. *little weighing our Command in this Behalf, hath maliciouſly ſuppreſſed our ſaid Writ in favour of the aforeſaid* T. or thus, *hath refuſed to receive our Writ, and to hold his Court, and to do Juſtice to the ſaid* A. *in the Premiſſes, in Contempt of us and of our Command, and to the great Damage and manifeſt Danger of diſinheriting the ſaid* A. *And have*, &c. And upon that if the Defendant appear, he ſhall be put to anſwer, *&c.*

F But if the Lord of the Court hold his Court, but the Lord, or the Bailiff, or Officer will not do him Right, or delay him to have Right, or to make Proceſs, *&c.* then the Demandant may ſhew unto the Sheriff of the County how he is delayed, *&c.* and pray the Sheriff to award ſuch a Precept or Writ, which is called a *Tolt*, directed to his Bailiffs, by his Precept, to remove the Plea before him into his County; and upon that the Sheriff ought to award ſuch a Precept to his Bailiff, *&c.* and to go unto the Lord's Court, and there remove the Matter before the Sheriff in his County. And the Form of the Precept is ſuch:

Tolt on the Lord's Default, at the Plaintiff's Suit. Poſt. 7. E.

Robert A. *Sheriff of* Norfolk, *to* Edmund C. *the Lord the King's Bailiff of his Dutchy of* Lancaſter *of* F. *greeting: Becauſe I have received Information from the Complaint of* John B. *perſonally appearing at my County (to wit) on* Monday *next after*, &c. *in the Year*, &c. *held in the Shire-houſe at* Norwich, *that although he brought to* J. P. *and* J. B. *Bailiffs (of the ſaid Lord the King of the Dutchy aforeſaid) of* F. *aforeſaid, the Lord the King's Writ of Right Patent directed to the Bailiffs of the ſaid Lord the King of his Dutchy of* Lancaſter *of* F. *in my ſaid County, for the Purpoſe that they might do full Right to the ſaid* John B. *of the Manor of* F. *with the Appurtenances, whereof* John S. *deforceth him*; *yet becauſe the ſaid Bailiffs favour the ſaid* J. S. *in that Matter, and have hitherto delayed to do full Right according to the Exigency of the ſame Writ, I command you, on behalf of the Lord the King, firmly enjoining that you go in your proper Perſon to the Lord the King's Court of his Dutchy aforeſaid of* F. *and remove the Plaint which is there between the ſaid* John B. *and* John S. *by the ſaid Writ into my County next to be held, and ſummon by good Summoners the aforeſaid* John S. *that he be at my County of* Norfolk, *to be held on* Monday *next coming at* N. *in the Shire-houſe to anſwer the aforeſaid* John B. *thereupon*; *and have you there the aforeſaid Plaint, the Summoners, and this Precept. Dated in my County at* Norwich *in the Shire-houſe, on* Monday *next after*, &c. *in the Year aforeſaid.*

G And by this it appeareth, that the Demandant may remove the Matter out of the Lord's Court into the County Court: And it ſeems reaſonable that the Tenant may alſo remove the Matter by a *Tolt* made by the Sheriff, ſuppoſing that the Bailiffs of the Court do favour the Demandant in the Matter. *Tamen quære*; for the Rule in the Regiſter is, that the Tenant may remove the Plea out of the Lord's Court for good Cauſe before the Juſtices in the Common

[4.]

Tolt at the Tenant's Suit.

Common Pleas; but the Demandant cannot ſo do, becauſe he may have a *Tolt* from the Sheriff to remove it out of the Lord's Court into the County Court.

Recordare.

A But when it is in the County, he may remove it thence by a *Recordare* before the Juſtices in the Common Pleas. And by this Rule it ſeems, that the Tenant cannot remove the Plea by a *Tolt* out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a *Recordare*, &c. and that for good Cauſe ſhewed in the Writ. And the Writ of *Recordare* is ſuch: *The King to the Sheriff*, &c. *greeting: We command you, that taking with you four diſcreet and lawful Knights of your County, you go in your proper Perſon to the Court of* A. *of* B. *and in that full Court you cauſe to be recorded the Plaint, which is in the ſame Court by our Writ of Right, between* W. *Demandant and* S. *Tenant, of one Meſſuage with the Appurtenances in* B. *and have you that Record before our Juſtices at* Weſtminſter *from the Day of Saint* Michael *in fifteen Days, under your Seal and the Seals of four lawful Men of the ſame Court, who intermeddled in that Record, and prefix the ſame Day to the Parties, that they may be then there to proceed in that Plaint, as it ſhall be juſt; and have you there the Names of the aforeſaid four Men and this Writ. Witneſs*, &c. And in the End of the Writ of *Recordare* the Cauſe of the Removal ſhall be put in thus: *Becauſe the Meſſuage of the aforeſaid* T. *after the Death of the ſaid* T. *if the ſaid* W. *die without Heir of his Body, ought to deſcend to the Bailiff of the Court aforeſaid, who holds the Pleas of the ſame Court, as Couſin and next Heir of the ſaid* W. *and the ſaid* W. *hath deraigned* That *againſt the ſaid* T. *in the Court aforeſaid; wherefore becauſe the ſame Bailiff favoureth the ſaid* W. *in the aforeſaid Plaint, as it is ſaid, let Execution of this Writ be done, if the Cauſe be true, and the aforeſaid* S. *prays this, and otherwiſe not.*

V. 3 H. 4. 14. 12 H. 4. 13. & 17. 1 H. 7. 30. 1 & 2 P. & Ma. Dyer 111. *Pone.* 35 Ed. 3. *Droit* 30. Poſt. 7. E.

B And there are many other Caſes put in the Regiſter of Remover of this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the Matter, to have Part of the Land. Or if the Tenant alledges Baſtardy, or plead a Foreign Plea, or join the Miſe upon the Grand Aſſiſe, *&c.* And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the ſame (*a*) into the Common Pleas by a *Pone*, without expreſſing any Cauſe in the *Pone*. But the Tenant cannot remove it, without a Cauſe be expreſſed in the *Pone*.

Recordare. Poſt. 7. E.

C And it is a Rule, that a *Recordare* is not given to remove any Plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Demandant, but that ought to be out of the County Court. And the Form of the *Pone* for the Demandant is ſuch:

The King to the Sheriff, &c. *greeting: At the Petition of the Demandant put the Plaint which is in your County by our Writ of Right between* A. *Demandant and* T. *Tenant, of one Meſſuage with the Appurtenances in* T. *before our Juſtices at* Weſtminſter *on the Octave of the Holy Trinity next coming, and ſummon by good Summoners the aforeſaid* T. *that he be then there to anſwer the aforeſaid* A. *thereupon; and have you there the Summoners and this Writ.*

D And here is not ſaid [*and another Writ*] becauſe the original *Writ of Right Patent* doth remain with the Demandant, and not with the Sheriff, *&c.* as do other original Writs.

(*a*) *Note*; In ſuch Caſe the Plea may be removed into *B. R. per Hankford*; and there they may proceed thereon. 11 *H.* 4. 49.

And if the Tenant will remove the Plea out of the County by *Pone*, he ought to ſhew ſome Cauſe in the Writ; and the Writ is ſuch: *The King to the Sheriff*, &c. *Put the Plaint which is in your County*, &c. *before our Juſtices at* Weſtminſter *in fifteen Days of the Holy Trinity next coming*, &c. as above; *and tell the aforeſaid* A. *that he may be then there, if he will, to proſecute his Plaint thereupon againſt the aforeſaid* T. *and have you then there this Writ. Witneſs*, &c. *Becauſe the aforeſaid* A. *hath married* W. *the Kinſwoman of the Sheriff*, &c. *wherefore becauſe the Sheriff favoureth*, &c. *let Execution be done*, &c. as above.

E And in a Writ of Right in a Court Baron, if a Foreign Plea be pleaded, or the Miſe is joined to be tried by the Grand Aſſiſe; (*a*) now if the Bailiffs will proceed, the Tenant may have a Prohibition directed unto them, which ***Prohibition.*** ſhall inhibit the Bailiffs to hold the Plea. Or he may inhibit the Lord himſelf, that he ſhall not hold the Plea, *&c.* And alſo ſuch Writ ſhall be directed unto the Sheriff, forbidding him to hold Plea in the County Court upon the Writ of Right after ſuch Pleas pleaded; and if they do proceed, he may ſue forth an *Alias*, and a *Pluries*, and an *Attachment* againſt them.

F And it is to be known, that if the Lord or Bailiffs do ceaſe to proceed in the Plea by reaſon of ſuch Writ of Prohibition, then when the Juſtices in Eyre come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which iſſued before out of the Chancery, which is always inrolled in the Chancery; and thereupon he ſhall have a Writ directed unto the Sheriff to ſummon four Knights to chuſe the Grand Aſſiſe upon the Writ of Right which is in the Lord's Court, or in the County. And the Writ of chuſing the Grand Aſſiſe ſhall be ſuch:

(*b*) *The King to the Sheriff*, &c. *greeting: Summon by good Summoners four lawful Knights of your County, that they be before our Juſtices at the firſt Aſſiſes, when they ſhall come into thoſe Parts, to elect twelve of the lawful Knights of the Neighbourhood of* N. *who may better know and will ſpeak the Truth, to make Cognizance of our great Aſſiſe between* A. *Demandant and* B. *Tenant, of one Meſſuage with the Appurtenances in* N. *whereupon the ſame* B. *who is Tenant, hath put himſelf upon our great Aſſiſe, and hath prayed that Cognizance may be made, whether of them hath greater Right in the Meſſuage aforeſaid, and ſummon by good Summoners the aforeſaid* B. *that he be then there to hear that Election; and have you there the Names of the aforeſaid Knights and this Writ.* And when [5.]
A the Plea is in the Common Pleas, then this Writ of *Magna Aſſiſa eligenda* ſhall iſſue out of the Common Pleas, and is judicial: But in the Caſe before it ſhall iſſue out of the Chancery without paying a Fine. And if the Deman-
B dant ſue a Writ of *Præcipe in Capite* in the Common Pleas for Lands holden Ant. 3. D.
of another Lord than of the King, then the Lord of whom the Lands are holden, may ſue forth a Writ directed unto the Juſtices of the Common Pleas,

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(*a*) See this otherwiſe in the Court of Antient Demeſne, where in a Writ of Right Cloſe ſued, in Nature of a Writ of Right Patent, a Jury was returned there, inſtead of the Grand Aſſiſe. 2 *Mar. Dyer* 111.

(*b*) *Note*; The Knights ought to be *girded with Swords*, otherwiſe it is Cauſe of Challenge. See *Trin.* 6 *Eliz. Moor's Reports* 67. *Squire* and *Read.*

rehearſing how that the Land is holden of him, commanding them to proceed no further, &c.

Ant. 1. B.

C And as before is ſaid, none can ſue or maintain ſuch *Writ of Right Patent*, but they who have an Eſtate in Fee-ſimple, as Tenant in Fee-ſimple, or Abbot, or Prior, or Biſhop, or Maſter of an Hoſpital; and a Body Politick, as Mayor and Commonalty, or Bailiffs and Commonalty, &c. and ſuch Bodies Politick may have ſuch Writs for their Poſſeſſions. But Parſons, Vicars, or Chantery Prieſts or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this *Writ of Right Patent*, but another Writ, which is called *Juris Utrum*; the Nature of which Writ ſhall be after expreſſed.

D If a Man bring a *Writ of Right Patent* as Heir unto his Anceſtor, he ought to lay the Seiſin and Eſplees, as in Pernancy of the Profits of the Lands in his Anceſtors. And if an Abbot, Biſhop, or ſuch Body Politick, bring ſuch Writ, he ought to lay the Seiſin of the Eſplees as in Pernancy of the Profits in themſelves, or in their Predeceſſors. And for the Reſidue of this Matter touching the *Writ of Right Patent*, and the Count, and the Bars, and all the Circumſtances thereof, ſee the Title of *Droit* in the Abridgments.

Præcipe in Capite.
Ant. 3. D.

31 H. 8.
Dyer 44, 45.

E And note, That a Writ of Right, which is called *Præcipe in Capite*, is no *Writ of Right Patent*, but is a Writ of Right Cloſe, and ſhall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is ſeiſed in Fee-ſimple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Caſtle, or Manor, but merely of the King as of his Crown, who is a Lord in Groſs, (becauſe it is holden of him who is always King) is deforced, &c. F And this Writ is as high in its Nature as the *Writ of Right Patent*; and no Perſon can ſue this Writ, if he hath not an Eſtate in Fee-ſimple of his own Poſſeſſion and Seiſin, or of the Seiſin of his Anceſtor or Predeceſſor.

G And it lieth alſo where Tenant in Fee-ſimple of any Lands or Tenements, who holdeth ſuch Land or Tenement of the King in Chief as of his Crown, and not of the King as of any Honour, Caſtle, or Manor, loſeth his Lands or Tenements by Default in a *Præcipe quod reddat*: Now he or his Heir may have this Writ of Right, of *Præcipe in Capite*, againſt the Tenant of the Freehold of thoſe Lands or Tenements. H And this Writ ſhall be Cloſe, and ſhall be directed unto the Sheriff, and returnable in the Common Pleas before the Juſtices there: And in this Writ he ought to lay the Seiſin in himſelf, or in his Anceſtor or Predeceſſor, in the ſame Form as he ſhall do in a Writ of Right.

I *The King to the Sheriff of* Nottinghamſhire, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one Meſſuage with the Appurtenances in* D. *which he claimeth to be his Right and Inheritance, and to hold of us in Chief, and whereof he complains that the aforeſaid* A. *unjuſtly deforceth him*; *and unleſs he will do this, and the aforeſaid* B. *ſhall give you Security to proſecute his Claim, then ſummon by good Summoners the aforeſaid* A. *that*, &c. Or thus, if an Abbot or ſpiritual Perſon ſue the Writ: *Which he claims to be the Right of his Church of Saint* Mary *of* N. *and to hold of us in Chief, and whereof he complains*, &c.

K And by this Writ it fully appears, that Lands which are holden of the King as of an Honour, Caſtle, or Manor, are not holden *in Capite* of the King, becauſe that the Writ of Right in ſuch Caſe ſhall be directed unto the Bailiff of the Honour, or Caſtle, or Manor, to do Right, *&c.* But when the Lands are holden of the King as of the Crown, they are not holden of any Manor, Caſtle, or Honour, but merely of the King as King, and of the King's Crown as of a Seigniory (*a*) by itſelf in Groſs, and in Chief above all other Seigniories. And thereof it followeth, that there are many Errors and erroneous Opinions at this Day in the ſuing of Liveries, and finding of Offices, and determining which Lands ſhall be taken to be holden of the King in Chief, and which not; and therefore *quære* to know the Truth.

Bro. Livery 57. Prerog. R. 29 B. V. 21 E. 3. B. Tenures, 16. 33 H. 8. 52. there are ſome Honours of which Lands are holden *in Capite.* Dyer 45.

L In *Præcipe in Capite* the Tenant ſhall not plead, that the Tenements are not holden of the King, although the Writ doth ſo ſuppoſe; but he ought to take the ſame by Proteſtation, and plead other Matter in Bar, if he have any Matter to plead.

38 E. 3. 13. Br. *Droit de recto* 9. F. *Droit* 5.

M And in a Writ of Right he ought to count of his own Seiſin, or of the Seiſin of his Anceſtor: And if he count of the Seiſin of his Anceſtor, he may alledge the Seiſin in the Time of King *Richard* the Firſt, but the Seiſin is not traverſable: But the Tenant may tender a Demy Mark to inquire of this Seiſin, *&c.* And if it be found with the Tenant, that the Anceſtor was not ſeiſed, the Demandant ſhall be barred. But if the King be Party Demandant, the Tenant cannot tender the Demy Mark to inquire of the Seiſin, but ought to plead in Bar; and there the Tenant ſhall have no Imparlance without the Aſſent of the King's Serjeants. And it ſeems reaſonable, if the Tenant in a *Præcipe quod reddat* loſe by Action tried, that yet he ſhall have a Writ of Right.

Litt. 114.

N And ſo if the Demandant be barred in an Aſſiſe of *Mortdaunceſter* brought by him, or other real Action, as a Writ of *Entry ſur Diſſeiſin*, &c. or the like Writ, and is barred by Action tried, yet he ſhall have a *Writ of Right Patent*, or *Præcipe in Capite*, if the Lands be holden of the King in Chief: And ſo it ſeemeth, if a Man loſe by Default in a Writ of Right

4 Co. 43.

[6.]

5 Co. 86. If the Tenant after the Miſe joined maketh Default, final Judgment upon that Default ſhall not be given, but a *Petit Cape* ſhall iſſue; for peradventure he may ſave his Default: But Judgment final, where it ought not to be in a Writ of Right, ſhall bind until it be reverſed.

(*a*) *Note*; *M.* 30 *H.* 8. *Dyer* 44. A Tenure in Chief (1.) ought to be held of the King, and created by him. (2.) It ought to be held of him as of his Perſon. And (3.) *per Dyer* 45. The King by no Means can grant or ſever the Tenure and *Seigniory in Chief* from the Crown. The King purchaſes a Meſnalty, yet the Tenant ſhall hold as before: So if he forejudge the Meſne, *&c.* he ſhall hold as the Meſne held. The King grants Land in Tail, and after confirms it to hold of him by a Penny, *&c.* The Grantee ſhall notwithſtanding hold it in Chief, although there are theſe Words added, *And not in Chief*; and if he grant the Reverſion, both the Tenure and the Services ſhall remain to the King. See the Tenure of the Honour of *Plympton*, and 36 *H.* 8. *Dyer* 58. The Tenure of the Honour of *Glouceſter*; and *Note*, The Tenure of the Principality of *Wales*, is not the ſame. *Dyer* 344.

(*a*) before the Miſe joined, yet he ſhall have a Writ of Right againſt him who recovereth. But after a Miſe joined it is otherwiſe; for then upon Default after Iſſue joined, the Judgment ſhall be final, as well againſt the Demandant by his Nonſuit, as againſt the Tenant, if he make Default after.

And a Man ſhall have a *Writ of Right Patent* of a Rent, as well as of A Land.

This muſt be intended of a Rent-Service, for of a Rent-Charge or Seck no Writ of Right lies; *per Herle.* 45 *Ed.* 3. F. *Droit* 32.

Writ of Right in London.

WRIT *of Right Patent* in *London* lieth of Lands or Tenements within the City, *&c.* by him who claims an Eſtate in Fee-ſimple in the Lands and Tenements, and not by him who claims an Eſtate for Life, or in Tail, or in Dower, or by the Courteſy. For if Tenant in Fee-ſimple loſeth his Lands in *London* by Default, or by Verdict, it ſeemeth that he ſhall have a Writ of Right of thoſe Lands directed unto the Mayor and Sheriffs, and it ſhall be in the Nature as a *Writ of Right Patent*. And the Form of the Writ is ſuch:

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* *Judgment* in a Writ of Right, *vide ant.* pag. 1. and 2. *& infra* †.

(*a*) The Demandant imparls on the Voucher of the Tenant and returns (into Court) and the Tenant was demanded and made Default, and Judgment given againſt him, *Becauſe he departed in Contempt of the Court.* 38 *Ed.* 3. 13. and ſo of the Demandant if he imparls, *&c.* after the Miſe joined. 13 *Ed.* 3. F. *Judgment* 169. and the like of the Tenant, 11 *Ed.* 3. F. *Judgment* 126. Judgment final is given on a Departure in Deſpight of the Court. 53 *Ed.* 3. F. *Judgment* 252. But not on a Default in a Petit Cape after the Miſe joined. 12 *Ed.* 2. F. *Judgment* 235. So Judgment final is given on a Confeſſion after the Miſe joined, but not before. 13 *H.* 4. F. *Judgment* 245. 33 *Ed.* 3. *ibid.* 253.

Where the Tenant vouches, final Judgment ſhall not be given againſt the Vouchee, except he be Tenant to him that vouches him, though it be after the Miſe joined; *per Bingham.* 13 *Ed.* 3. *Judgment* 152. *contr.* 14 *Ed.* 3. *ibid.* 154. *See* Judgment againſt a Prebend. 12 *Ed.* 3. *Judgment* 163. againſt a Baron and Feme; and yet the Feme ſhall afterwards have a *Cui in vita.* 33 *Ed.* 3. *ibid.* 252. It ſhall not be againſt the King. *Ibid. Judgment* 232. *See* Judgment final given after the Champions were brought, and at another Day given, the Tenant made Default; but the Demandant appeared with his Champion. 29 *Ed.* 3. 12. and ſo is 1 *H.* 6. 7.

† *Note*; If the Tenant tenders the Miſe, either by Grand Aſſiſe or Champion, and the Demandant imparls thereupon, and at the Day the Tenant makes Default; Judgment final ſhall be given, *Becauſe he departed in Contempt of the Court.* 3 *H.* 6. 55. 10 *H.* 6. 2. and ſo is the Caſe to be intended. 44 *Ed.* 3. 28. *Vide ſupra* *. So if after the Miſe is joined by Champion, the Tenant appears without his Champion. 12 *H.* 7. 10. But if the Miſe is joined by Grand Aſſiſe or Battle, and afterwards the Plea is put without Day, *i. e.* diſcontinued; and then upon a Reſummons the Tenant afterwards makes Default, Judgment final ſhall not be given. 3 *Ed.* 3. 5. 1 *Ed.* 3. Alſo if the Miſe is joined by Grand Aſſiſe, and at the Day of *Niſi prius, &c.* the Tenant makes Default, a Petit Cape ſhall iſſue; and if at the Return thereof the Tenant does not come in, nor ſave his Default, Judgment final ſhall (not) be: But if the Demandant makes Default at any Day after the Miſe joined, Judgment final ſhall be given againſt him. See 12 *H.* 7. 10. or 20. *Dyer* 98, 103. 5 *Co.* 86. *a.* See 3 *Ed.* 3. 29. If in a Writ of Right againſt Baron and Feme, they tender the Miſe, and the Demandant imparls thereupon, and afterwards makes Default, Judgment final ſhall be given.

Note; Where it was againſt Baron and Feme, and before the Miſe accepted. 11 *Ed.* 3. F. *Judgment* 126. 13 *Ed.* 3. *ibid.* 129. *acc.* where the Termor was received. And 14 *Ed.* 3. 151. *Simile. Vide poſt.* 11. D. E.

C *The King to the Mayor and Sheriffs of* London, *greeting: We command you, that without Delay you do full Right to* E. *of* N. *of one Meſſuage and two Shops with the Appurtenances in* London, *which he claims to hold of us by free Service*, &c. *whereof* W. *deforceth him, that we may hear no more Clamour thereupon for want of Right. Witneſs*, &c. And it ſhall not be ſaid in this Writ, *And unleſs you will do this, the Sheriff of ſuch a County ſhall do it*, becauſe the Writ is as well unto the Mayor of the ſaid City as unto the Sheriff.

And the *Writ of Right Patent*, which ſhall be directed unto another City or Borough, ſhall be of like Form as the Writ aforeſaid is, as appeareth by the Regiſter, thus:

The King to the Mayor and Bailiffs of Oxford, *greeting: We command you, that without Delay you do full Right*, &c. *to* E. *of* C. *of twenty Shillings Rent, and Paſture for ſixteen Cattle, with the Appurtenances in* N. *of which* A. *of* B. *unjuſtly deforceth him*, &c.

Burgage Tenure.

D And becauſe that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage Tenure, it behoveth that the *Writ of Right Patent* be directed unto the ſaid Mayor and Sheriffs or Bailiffs, as Bailiffs and Officers of the King, as if Lands were holden of the King as of an Honour, or Caſtle, or Manor.

Note; All the Lands, &c. within the City of *London*, and the Liberties thereof, are held in Free Burgage without any Meſnalty. *Privileg. Lond.* 72.

E And alſo upon a Writ of Right ſued in *London* the Plea ſhall not be removed by (*a*) *Tolt*, or *Pone*, or *Recordare*, as another Writ of Right ſued in the Court of another Lord ſhall be. But if the Tenant in the *Writ of Right in* London vouch a Foreigner to Warranty, the Demandant ſhall come into the (*a*) Chancery, and ſhall ſue a *Summ' ad warrantizandum* in the Common Pleas before the Juſtices at a certain Day, and another Writ unto the (*b*) Mayor and Sheriffs, to ſend the Record before the ſaid Juſtices at the ſame Day, &c. and then the Mayor and Sheriffs do adjourn the Parties before the Juſtices of the Common Pleas at a certain Day; and alſo at the ſame Day ſhall ſend the Record which is before them before the ſaid Juſtices; and when the Juſtices have determined the Warranty, they ſhall (*a*) ſend back the Record by Writ, which ſhall iſſue out of the Rolls of the Juſtices, directed unto

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(*a*) *N. B.* That at Common Law the Record was removed by a Writ out of Chancery, and after the Warranty determined, it was remanded back; *per Hankford*. 14 *H.* 4. 26.

(*b*) See the Power of the *Juſtices* on ſuch Removal of the Record. 44 *Ed.* 3. 2. They may record an Aid Prayer for the Tenant, and remand the Record. 18 *Ed.* 3. 1. They may grant a Reſceit to the Wife on a Departure of the Huſband, in Deſpight of the Court. *Contra* 31 *Ed.* 3. F. *Reſceit* 125. But they cannot give Judgment upon a Default. *Ibid.* 41 *Ed.* 3. 31. 42 *Ed.* 3. 1. Nor give Judgment upon a Confeſſion; nor take an Iſſue between the Tenant and Vouchee; nor enter the Confeſſion, &c. 18 *Ed* 3. 1.

A Vouchee cannot plead in Bar, but may vouch over a *Foreigner*; *per Kelſ. contra Stouff*; and 49 *Ed.* 3. 31. *per Wich.* and *Bale.* See 41 *Ed.* 3 31. and 49 *Ed.* 3. 21. They cannot try a new Iſſue pleaded by the Tenant to the Writ.

the Mayor and Sheriffs, commanding them to proceed in the Plea within the ſaid City. And the ſame is by the Statute of *Glouceſter*, *Of Foreign Voucher to Warranty*, *cap.* 12. And ſo it ſhall be done, if the Tenant plead a Foreign Plea, (*a*) the Plea ſhall be removed as aforeſaid, and when the Matter (*a*) of the Plea is determined, then it ſhall be ſent back unto the Mayor and Sheriffs as aforeſaid, by the Equity of the ſaid Statute.

And by the Rule in the Regiſter every *Præcipe quod reddat* of Plea of Lands or Tenements in *London* ſhall be directed unto the Mayor and Sheriffs jointly: But every other Writ ſhall be directed unto the Sheriffs only.

V. 18 E. 3. 8. 4 E. 6. 59. And now it is a common Opinion, That if a Man hath Title to have a *Formedon* of Lands or Tenements in *London*, or any other Action Real, as a Writ of *Entry ſur Diſſeiſin*, or other Writ whatſoever of Lands or Tenements, he ought to ſue this *Writ of Right-Patent* (*b*) directed unto the Mayor and Sheriffs of *London*, that they ſhall do Right, *&c.* and that the Demandant, upon this Writ, ſhall make his Proteſtation to ſue it in the Nature of what Writ he will, as a Man ſhall do upon a Writ of *Droit Cloſe* ſued in Antient Demeſne. But it ſeemeth the Law ſhall not be ſo; for this Writ is a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs as other Writs directed unto another City or Borough are. And I have not heard that a Man ſhall make Proteſtation to ſue ſuch Writ Patent in the Nature of what Writ he will. But the City of *London* by their Cuſtom have Power to hold Pleas of Lands within the City by other the King's Writs as well as by *Writ of Right Patent*, and that appeareth by the Regiſter. F

7 H. 6. 32. ac. 37 H. 6. 27. But *Plow.* 124. *Staundford*, contrary. (*c*) And it appeareth, that *London* is not Antient Demeſne; for then the Writ of Right, which ſhall be directed unto the Mayor and Sheriffs, ſhould be Cloſe, and not Patent. And it appeareth by the Regiſter, in the Title of *Juris Utrum*, that a *Juris Utrum* was ſued of Tenements in *London* returnable before the Juſtices of the Common Pleas. G

And alſo it appeareth in the Regiſter, in the Title of Writs of Waſte, in the End of the Title, that a Writ of *Partic' facienda* was directed unto the Mayor and Sheriffs of *London*, to make Partition of Tenements in *London*; and alſo there followeth a Writ of *Eſtrepement*, ſued and directed unto the Sheriffs

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(*a*) *Id eſt*, In a Plea Real, but not in a Plea Perſonal; *per Friſby*. 3 *H.* 4. 12. But on a Foreign Plea pleaded in a Plea Real or Perſonal it ſhall be removed to be tried, and afterwards remanded, by the better Opinion. *Ibid.* And ſo it is on a Foreign Plea pleaded in a Court Baron, or Antient Demeſne, or County Palatine. 14 *H.* 4. 25, 26. 22 *H.* 6. 48. *Lib. Intrat.* 229. But it is otherwiſe, if a Reſummons be ſued out of a Court which has Conuſance on a Foreign Plea; *per Cur'.* 14 *H.* 4. 25. See *per Norton* and *Hull*, a Foreign Iſſue joined in Debt brought in Court Baron or other Court, which may hold Plea thereof, or in a Suit by Bill by a Copyholder; it ſhall not be tried here (in *Weſtmin-Hall*) *contra* of a Writ of Right brought in the Court of the Lord. 1 *H.* 5. 12. *Qr.* 264.

(*b*) See a *Formedon* of Lands in *London.* 43 *Ed.* 3. 21. So a Writ of Right in the Huſtings there, and Proteſtation made in Nature of a *Formedon.* 18 *Ed.* 3. 8. See alſo 3 *H.* 4. 12, 19. A Foreign Plea pleaded in a *Formedon* in *London* ſhall be removed to be tried (here) and after Trial remanded to be adjudged (there). 14 *H.* 4. 25.

N. B. 18 *Ed.* 3. 8. The Writ of Right was ſued in Nature of a *Formedon in Deſcender* in *London.* See 4 *Inſtit.* 147. And no Writ lies of Lands in *London*, but in *London* only. *Dyer* 317.

(*c*) *Note*; In 7 *H.* 6. 32. it is certified, that *London* is not Antient Demeſne.

Sheriffs of *London*, upon a Writ of (*a*) *Juris Utrum* depending before the Juſtices of the Common Pleas, of Tenements in *London*. [7.]

A And it appeareth in the Regiſter a Writ of *Juſticies* of Dower ſued in *London* for Lands in *London* was directed unto the Mayor and Sheriffs of the City, and a ſpecial Writ for the Heir in Tail for Lands in *London* directed unto the Mayor and Sheriffs there, upon a (*b*) Deviſe made of the Lands unto his Anceſtors in Tail, *&c.* And the like Writ for him in the Remainder in Tail, and alſo for him in the Reverſion. And the like Writs upon Deviſes made in other Cities and Boroughs by ſome Perſons to others, *&c.* And theſe Writs are in the Regiſter after the Writ of *Formedon* in the Remainder. *Fol.* 244.

And by theſe Writs it appeareth, that a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs of *London*, is not ſuch a Writ as a Man ſhall declare thereupon in the Nature of what Writ he will, *&c.* as it ſhall be upon a Writ of *Droit Cloſe* ſued in Antient Demeſne; but that it behoveth to ſue in *London* his Writ in the Nature of ſuch Writ as his Caſe requireth, *&c.* But *quære veritatem* of that which was uſed in antient Times in *London*.

B And it appeareth in the Regiſter, that the King ſhall have a Writ of Eſcheat returnable into the King's Bench for Lands in *London* eſcheated unto the King; and by the ſame Reaſon another Man ſhall have a Writ of other Nature, there, returned in the Common Pleas. *Quære*; For the King hath a Prerogative in this Matter before others, to ſue in what Court he will; but he cannot alter or change the Nature of the Writ, otherwiſe than the Law giveth the ſame to him; (*c*) and therefore *quære* of this Matter. *Eſcheat.*

C There is alſo another Suit which lieth in a City or Borough for Lands or Tenements, by Uſage and Cuſtom of the City, and that is by Bill without any Writ out of the Chancery; and the ſame is called a Bill of *Freſh Force*, or an Aſſiſe of *Freſh Force*, and lieth only where a Man is diſſeiſed of his Lands and Tenements in any City or Borough, or deforced of any Lands or Tenements after the Death of his Anceſtor, or after the Death of his Tenant for Life, or in Tail, or in Dower, or the like; now within forty Days after the Title accrued unto him, he may ſue this Bill of *Freſh Force*, and ſhall make Proteſtation to ſue in the Nature of what Writ he will, as Aſſiſe *de Mortdaunceſter*, or Aſſiſe of *Novel Diſſeiſin*, or *Intruſion*, or of *Formedon*, or in the Nature of any other Writ, as his Caſe doth require: But after the *Aſſiſe of Freſh Force.*

(*a*) See a *Juris Utrum* of Tenements in *London* challenged; for that their Franchiſe is, not to implead or be impleaded without their City Walls. *M.* 16 *Ed.* 3.

(*b*) See the firſt Charter of *Ed.* 3. to *London*; the Citizens of *London* being Freemen, may deviſe their Lands there in Mortmain; and this ſeems to be an antient Cuſtom there. See *Cro. Car.* 48 and 57. And by the Cuſtom of *London* he who holds Lands there jointly with others, may deviſe that which belongs to him without any other Severance. See 49 *Ed.* 3. *London.* And by the Cuſtom there, all the Lands and Tenements, Rents and Services, within the ſaid City and Suburbs are deviſable. So that the Freemen and Women of the ſaid City may by the ſaid Uſage deviſe them to whom and for what Eſtate they will. See *Calthorp*'s Caſes 103, 104. *W. B.*

(*c*) Here the Words *and others* are added to the Original.

forty Days paſt after the Title accrued unto him, he ought to ſue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the Caſe lieth.

D And alſo it appeareth by the antient Treatiſe of *Natura Brevium*, that if a Foreigner ſue an Aſſiſe, or other *Præcipe quod reddat* of Lands in *London* in the Common Pleas, *&c.* that the Mayor and Sheriffs, *&c.* (*a*) may demand Conuſance, *&c.* And therefore it ſeemeth, if they do not demand Conuſance of the Plea, but ſuffer the Recovery to paſs in the Common Pleas before the Juſtices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs ſhall demand Conuſance of Pleas, and when not, and when they have ſurceaſed their Times, appeareth in the Title *Conuſance*, in the Abridgments, more at large; and therefore ſee there.

Writ of Right of Dower.

E THE *Writ of Right of Dower* is Patent, and ſhall be directed unto the Heir, to ſue in the Court of the Heir, as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Huſband, and the ſame Heir is ſeiſed of the Land whereof the Wife demandeth Dower, then if he will not aſſign Dower unto the Feme, the Feme who is Demandant may remove the ſame by a *Tolt* into the County, and alſo may remove the ſame out of the County into the Common Pleas by a *Pone*, *&c.* without ſhewing of any Cauſe in the Writ, as the Demandant ſhall do in a Writ of Right Patent. But the Tenant in a Writ of Right Patent ſhall not remove the Plea out of the County into the Common Pleas, without ſhewing of Cauſe in the *Pone*. And the Tenant in a Writ of Right Patent, or in a *Writ of Right of Dower*, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon Cauſe ſhewed in the Writ. And what Cauſes are ſufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Regiſter; and therefore ſee the Cauſes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, becauſe he ought firſt to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone* without ſhewing of Cauſe in the Writ, as before is ſaid.

Tolt, ant. 3. F. G.

Ant. 4. B.

And in a Writ of Right Patent the Plea may be removed at the Tenant's Suit by a *Recordare* out of the Lord's Court into the Common Pleas, before the Juſtices there: And by the ſame Reaſon it ſeemeth, that it may be removed at the Suit of the Tenant, in a *Writ of Right of Dower*, out of the Heir's Court into the Common Pleas, before the Juſtices there, by *Recordare*, for good Cauſe. But *quære*.

(*a*) See *per Pult.* That they have not Conuſance in Pleas (or Suits) Real, but only in Pleas Perſonal, *M.* 16 *Ed.* 3.

F And if the Huſband do enfeoff a Stranger of all his Lands, and dieth, and his Heir hath nothing by Deſcent; now if the Feme be to ſue forth a *Writ of Right of Dower*, it ſeemeth ſhe ſhall ſue her *Writ of Right of Dower* directed unto the ſame Feoffee, *&c.* for after the Endowment the Feoffee ſhall be her Lord, and ſhe ſhall hold this Dower of him by Fealty. But before the Statute *de quia Emptores terrarum*, if the Huſband enfeoff a Stranger of Parcel of his Lands, *&c.* to hold of him, then if the Feme be to ſue a *Writ of Right of Dower* againſt the Feoffee, the Writ ſhall be ſued in the Heir's Court, and the Writ ſhall be directed unto the Heir, for the Seigniory that remaineth in him. [8.]

A And ſo if the Huſband at this Day giveth Parcel of his Manor in Tail to hold of him, and dieth, the Feme ſhall ſue her *Writ of Right of Dower* in the Court of the Heir of her Huſband againſt the Donee in Tail, and the Writ ſhall be directed unto the Heir: But if the Huſband make a Gift in Tail of all the Lands that he hath, and dieth, and the Feme is to ſue a *Writ of Right of Dower* of that Land; then the Huſband's Heir cannot have any Court, becauſe he hath but a Seigniory in Groſs; and therefore it ſtands with Reaſon that ſhe ſhould have her *Writ of Right of Dower* againſt the Donee in Tail directed unto the Sheriff, returnable in the Common Pleas, and ſhe ſhall have this Clauſe in the Writ; *Becauſe* B. *the chief Lord of the Fee, hath thereupon remitted to us his Court.*

B And ſo if the Huſband make a Leaſe of all his Lands unto a Stranger for Life, and dieth, and the Feme is to bring a *Writ of Right of Dower* againſt the Leſſee for Life; then it ſeemeth reaſonable that the Feme have her *Writ of Right of Dower* againſt the Leſſee for Life in the Common Pleas, becauſe that he in the Reverſion hath not any Court. And although that this Clauſe, *viz. Becauſe* B. *the chief Lord*, &c. be put in the Writ, if the Lord have not any Court to hold, becauſe it is a Seigniory in Groſs, and not any Demeſne Land to hold a Court, *&c.* then, although the Lord did never remit his Court, and that there is not any Matter apparent or remaining in the Chancery to prove the Lord's Will and Aſſent to remit his Court, yet the Writ returned into the Common Pleas before the Juſtices there, is good; and they ſhall proceed thereupon, if the Lord hath not any Court to hold Plea for this Matter. And it ſeemeth that the Lord ſhall not have his Action againſt ☞ the Demandant for ſuing the Writ in the Common Pleas, if he have no Court to hold Plea thereupon, and to do Right unto the Party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Juſtices of the Common Pleas, that they do not proceed upon the Plea, otherwiſe not. *Quære* of this Matter.

C And this *Writ of Right of Dower* lieth where a Feme is endowed of Parcel of her Dower; and ſhe would demand the Reſidue againſt the ſame Tenant, and in the ſame Town, then ſhe ought to ſhew this *Writ of Right of Dower*; for the Words of the other Writ will not ſerve, *viz. unde nihil habet*, becauſe that ſhe hath received Part of her Dower; and therefore of Neceſſity it behoveth her to ſue this *Writ of Right of Dower* to recover the Reſidue; and the Writ ſhall be directed unto the Heir, or unto his Guardian, if he be in Ward, as a Writ of Right Patent ſhall be, *&c.*

And if a Feme loſe her Land which ſhe holdeth in Dower by Default in a D
Præcipe quod reddat; yet according to (*a*) the Opinion of ſome Men, ſhe ſhall
have a *Writ of Right of Dower*. But it ſeemeth, by the Equity of the Statute
of *Weſt.* 2. *cap.* 4. that if a Feme loſe by Default the Land whereof ſhe
hath had Dower, that by that Statute ſhe ſhall have a *Quod ei deforceat* to recover
the Land; and before that Statute ſhe had no Remedy for to recover
the Land, but only an Action of *Diſceit*, if ſhe were not ſummoned in this
Writ of Right of Dower.

And if a Feme hath a Dower, and loſe the ſame by Aſſiſe or Action tried, E
it ſeemeth ſhe hath not any Remedy but only by Attaint; for it ſeemeth that
ſhe ſhall not have Remedy to recover by a *Writ of Right of Dower*, becauſe
ſhe had the Land once aſſigned unto her in Dower, and ſhe was in Poſſeſſion
of the ſame, ſo that the Title was executed, and ſhe ought to ſue an Action
of her own Poſſeſſion, if ſhe be afterwards deforced. *Tamen quære.* And F
after the Plea removed unto the Common Pleas, the Proceſs is then *Grand
Cape* and *Petit Cape*. And in the Heir's Court the Manner is to make a Precept
in the Nature of Summons, and of *Grand Cape* and *Petit Cape*, and the
Writ directed unto the Heir is ſuch:

The King to A. *greeting: We command you, that without Delay you do full* G
Right to B. *who was the Wife of* C. *of a third Part of ten Acres of Land with
the Appurtenances in* W. *which ſhe claims to hold of you in Dower by the free
Service of a third Part of one Penny* per Annum *for all Service, whereof* C. *unjuſtly
deforceth her*, &c.

And alſo a Feme may have a *Writ of Right of Dower* of the Moiety, according H
to the Uſage of *Gavelkind*, where ſhe hath received Part, and is deforced
of Part. And it alſo appeareth by the Regiſter, that the Feme ſhall I
have a *Writ of Right of Dower* directed unto the Heir himſelf, where he himſelf
deforceth her of the Profits of an Office; and the Writ is ſuch:

The King to A. *greeting: We command you, that you do full Right to* A. *and* R. K
his Wife, of the third Part (*b*) *of the Iſſues ariſing from the Keeping of the Gaol
of* Weſtminſter-Abby, *and of the third Part of three Roods of Land, one Rood
of Meadow, and of the Rent of ſo many Loaves, and of ſo many Flaggons or of
ſo many Firkins of Ale by the Day, or by the Week, or by the Year, with the Appurtenances
in the City of* Weſtminſter, *which they claim to belong to their free
Tenement, which they hold of you for the Dower of the ſaid* R. *in the ſaid City,
and to hold of you by the free Service of finding for you one third Part of a Keeper
for the Keeping of the Gaol aforeſaid, and of the Gate of the ſaid Abby, for all
Service, whereof you yourſelf unjuſtly deforce them*, &c.

(*a*) See accordant herewith *Jon. Rep.* 381. 1 *Cro.* 445. And in ſuch Caſe the Writ mentions their Eſtates. *W. B.*

(*b*) See 15 *Ed.* 3. F. *Dower* 81. Dower demanded of the Profits ariſing from a Fair. See 11 *Ed.* 3. F. *Dower* 85. Dower demanded of the Moiety of a Stallage ariſing from a Fair, and held good, without ſaying a Moiety of the Profits of the Stallage; for the Stallage is the Profits. See the *Book of Entries* 234. *Of the third Part of the Iſſues and Profits of a certain Market every* Tueſday, *and of a Fair every Year on the Feaſt of*, &c. 12 *Ed.* 3. F. *Dower* 90. A Demand of the third Part of the Profits of the Office of a Bailiff, Parker, *&c.* without demanding a third Part of the Office itſelf; which cannot be, becauſe the Office is intire. *Quære* of the Office of Tentury, *ibid.* See 45 *Ed.* 3. F. *Dower* 50. where a Feme was endowed of the third Part of the Profits of a Mill; and had (thereby) the Freehold of the third Part of the Mill veſted in her. See 21 *Ed.* 3. 57. Dower of the third Part of the Office of the Marſhalſea.

A And by this it appeareth, that a Feme ſhall have a *Writ of Right of Dower* [9.]
of that Thing which is appendant or appurtenant unto the Land which ſhe Vide infra I.
holdeth in Dower, *&c.* if ſhe be deforced thereof. accord'.

Writ of Right de rationabili Parte.

B A Writ of Right *de rationabili Parte* always lieth betwixt Privies in Blood,
as betwixt Brothers in *Gavelkind*, or betwixt Siſters and other Coparce-
ners, as Nephews and Nieces, and lieth for Lands in Fee-ſimple: As if the
Anceſtor leaſe his Lands for Term of Life, and dieth, and hath Iſſue two
Daughters, and afterwards the Tenant for Life dieth, and one Daughter en-
treth into the whole Land, and deforceth her Siſter of the Land; her Siſter
ſhall have this Writ of Right *de rationabili Parte:* And ſo if the Anceſtor
was diſſeiſed of Lands, and dieth, and one Siſter entreth into the Land, and
deforceth her Siſter thereof; the Siſter who is deforced ſhall have this Writ
againſt her other Siſter. And ſo two or three may ſue this Writ againſt the
C fourth Siſter, or the Aunt, and the Niece may ſue this Writ againſt that Siſter
which deforceth her of her Part, *&c.* And this Writ lieth as well upon a
D dying ſeiſed of the Anceſtor, if one Siſter enter upon all, and deforce the
E other Siſters, as where the Anceſtor doth not die ſeiſed: And the Writ is a
F *Writ of Right Patent*, and ſhall be directed to the Lord of whom the Lands
G are holden, as other *Writs of Right Patent* ſhall be, and ſhall be removed by
Tolt and other Writs, as the Common *Writ of Right* ſhall be. But Grand
Aſſiſe, nor Battail, ſhall not be joined in this Writ, for the Privity of the Nat. Brev.
Blood that is betwixt them. Neither ſhall this Writ be ſued againſt a Stranger, 119.
and if it be it ſhall abate. And if the Anceſtor die ſeiſed, and one Siſter en- Poſt. 197.
treth into all the Land, and deforceth her Siſters, the others may ſue this
Writ of Right *de rationabili Parte*, or a Writ of *Nuper obiit*, at their Elec-
tion. And ſo it is for Lands in *Gavelkind*; if one Brother entreth into all
the Lands, and deforceth his Brethren, they may ſue this Writ of Right *de
rationabili Parte*, or a *Nuper obiit*, if the Anceſtor die ſeiſed: But if the
Anceſtor doth not die ſeiſed, then they ought to ſue this Writ *de recto ratio-
nabili Parte.* But againſt a Stranger it behoveth to ſue *Aſſiſe de Mortdaunceſter* Nat. Brev.
upon the Death of their Anceſtor, or other Writ (as their Caſe ſhall require) of 119.
the Seiſin of their Anceſtor. And the Form of the Writ of Right *de ratio-
nabili Parte* is ſuch:

H *The King to* A. B. *greeting: We command you, that without Delay you do full Right to* W. F. *of ten Acres of Land with the Appurtenances in* B. *which ſhe claims to be her reaſonable Part, which belongs to her of the free Tenement which was* J.'*s, her Father's or Mother's, Uncle's or Aunt's, or Couſin's, in the ſame Vill, and to hold of you by the free Service of the third Part or the fourth Part of one Penny* per Annum *for all Service, whereof* B. *and* S. *unjuſtly deforce her.*

And by the Regiſter, in this Writ, a Man may ſee what Rent and Services all the Land which is partible betwixt the Siſters ſhall yield and pay unto the chief Lord, and accordingly put every one of the Heirs to her Part. So if there be one Demandant and two Deforceants, then thus; *Which ſhe claims to hold*

hold of you by the free Service of the third Part of ſo much per Annum. And if there be two Demandants and two Deforceants, then thus: *Which ſhe claims to hold of you by the free Service of a Moiety*; or, *of two Parts of ſo much* per Annum *for all Service.* And if the Land be holden by 4*d. per Annum* and Fealty, and there are two Demandants and two Deforceants, then the Writ may be: *Which ſhe claims to hold of you by the free Service of two Pence* per Annum *for all Service*, &c.

And if there be two Siſters, and after the Death of the Anceſtor they enter I
and occupy in common as Coparceners, and one of them deforce the other
* V. ſup. A. accord'. Siſter to occupy that which is * appendant or appurtenant to the Tenement
which they have in Coparcenary; then ſhe who is deforced ſhall have a Writ
of Right *de rationabili Parte* againſt her Siſter, of that which is ſo appendant
or appurtenant, and the Writ for that ſhall be ſuch: *Which ſhe claims to belong
to her Freehold which ſhe holds of you in the ſame Vill, and ought to hold of you
by the free Service of ſo much for all Service, which* W. &c. And in this Writ K
he ſhall make his Demand of a certain Portion of Land, as to ſo much as his
Plea doth amount unto, to hold in Severalty; as if the Anceſtor die ſeiſed of
twenty Acres, and hath two Daughters, and one entreth into the Whole, and
deforceth her Siſter; the other Siſter ſhall demand by her Writ ten Acres of
the twenty Acres, becauſe that ſuch is her Part; and by this Writ if ſhe recover, L
Judgment. ſhe ſhall have Judgment to recover ten Acres, to hold in Severalty, as
her Part doth amount unto (*a*).

And this Writ of Right *de rationabili Parte* ought to be brought againſt all M
the Coparceners that hold the Land, *&c.* and by all thoſe that are deforced of
the Land, as it appeareth by *Britton:* And Voucher and View do not lie in N
this Writ, becauſe of the Privity of Blood; but in a *rationabili Parte* the
View was granted *H.* 15 *H.* 5. becauſe that the Anceſtor did not die ſeiſed,
&c. And Non-tenure is no Plea in this Writ by *Britton*, *&c.* And the Proceſs O
in this Writ, after it is removed into the Common Pleas, is *Summons*,
Grand Cape and *Petit Cape*; and in the Lord's Court the Manner is to make
Proceſs in the Nature of *Grand Cape* and *Petit Cape*, *&c.*

And the Heir of one Coparcener may ſue this Writ of Right *de rationabili* P
Parte of the Seiſin of the common Anceſtor, which was of the Seiſin of his
[10.] Anceſtor in the Time of King *R.* 1. or *H.* 3. or of the Seiſin in the Time of
King *John*, or other Kings after that Time, if he can prove it. As a Man
ſhall have a Writ of Right Patent of the (*b*) Seiſin of his Anceſtors in ſuch A
Times, *&c.* But if one Coparcener claim the Land by a Feoffment made
Com. 306. unto her by her Anceſtor in Fee; now if the other Coparcener deforce her of
no Battail lieth betwixt them. the Lands, ſhe may have a Writ of Right Patent againſt her Siſter for the

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(*a*) Vid. accordant 12 *Ed.* 3. *Judgment* 162. 7 *Aſſ.* 10. 7 *Ed.* 3. 49, *&c.* cited in the Margin of *Co. Lit.* 167. *b.* That if two Coparceners be, and one diſſeiſe the other, and the Diſſeiſee recovers in Aſſiſe, *&c.* ſhe ſhall have Judgment to *hold* her Moiety *in Severalty*; ſo if one Coparcener recovers againſt the other in a *Nuper obiit*, or *rationabili Parte*, the Judgment ſhall be, that the Demandant ſhall recover and *hold in Severalty*. 3 *Ed.* 3. 48. 4 *H.* 7. 10. 30 *Ed.* 1. *Nuper obiit* 18. 21 *R.* 2. *Nuper obiit* 22.

(*b*) And in that Caſe if the Demandant be within Age, the Parol ſhall demur; *contra*, if there be no Meſne Deſcent of the Right. 7 *H.* 4. 20.

Land, and ſhall join the Miſe by Grand Aſſiſe, or by Battail, becauſe ſhe doth
not there claim the Land as Heir to her Anceſtor, as it ſeemeth: *Tamen
quære.*

B And if a Man hath Iſſue two Daughters, and dieth ſeiſed of Lands in Tail,
and one Daughter entreth into the Whole, and deforceth her Siſter; there the
Siſter may have a *Formedon* againſt the other Siſter, and not a *Nuper obiit*,
nor this Writ of Right *de rationabili Parte*; for this Writ lieth properly for
the Lands in Fee-ſimple.

Writ of Ne injuſte vexes.

Vide Mag. Char. cap. 10.

C WRIT of *Ne injuſte vexes* lieth in Caſe where Lord and Tenant are, and
the Tenant hath holden of the Lord and his Anceſtors by Fealty and
twenty Shillings Rent yearly, and of late Time the Lord hath gotten (*a*) Sei-
ſin of greater and more Rent of the Tenant, by Payment of the Tenant of
his own Agreement without Coertion of Diſtreſs: Now if the Lord will di-
ſtrain the Tenant for this Surpluſage of Rent, the Tenant cannot avoid the
Lord in an Avowry, for the Seiſin which the Lord hath had by the Pay-
ment of the Tenant of this Rent of his own Agreement. But the Tenant
D may ſue this Writ of *Ne injuſte vexes* directed unto the Lord; which Writ is
in itſelf a Prohibition unto the Lord, that he do not diſtrain his Tenant to do
other Services than of Right he ought to do. And this Writ in its Nature is
a Writ of Right, and ſhall be Patent; and this Clauſe, *And unleſs you will do
this, the Sheriff*, &c. ſhall be put into the Writ. And the Proceſs in this
Writ is, *Prohibition*, *Attachment* and *Diſtreſs* againſt the Lord, commanding
E him that he ſhall not diſtrain, *&c.* And this Writ is founded upon the Sta-
tute of *Magna Charta*, *cap.* 10. which willeth, *That no Man be diſtrained to do
greater Service for a Knight's Fee, nor for any other Freehold, than is therefore
due.* And the Form of the Writ is ſuch:

C. 4. Part 11. *Bevil's* Caſe, infra G.

F (*b*) *The King to* A. *greeting: We command you, that you unjuſtly vex not, or
permit to be vexed*, B. *concerning his free Tenement which he holds of you in* J.
*nor therefore require or permit to be required of him Cuſtoms or Services which he
oweth not, nor is uſed to do for the ſame; and unleſs you will do this, the Sheriff
of* Lincoln *ſhall cauſe the ſame to be done, that we may hear no more Clamour
thereupon for want of Right.*

And this Writ is always Anceſtrel, *viz.* where the Tenant and his Anceſtors have holden of the Lord and his Anceſtors by Fealty and twenty Shillings Rent, or other Rent and Service; and of later Time the Lord hath incroached divers others Services or Rents, by Payment of the Tenant, or

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(*a*) But if the Lord recover more on an Action tried, the Tenant ſhall not have a *Ne injuſte vexes*; *per Knivet*: *Quære.* 39 *Ed.* 3. 18. and ſee accordant 38 *Ed.* 3. F. *Droit* 32. And by *Green*, the Tenant ſhall have a *Ne injuſte vexes*, although the Lord recovers the Rent by Aſſiſe, which he had releaſed, but the Deed thereof not produced in Evidence; or where the Aſſiſe was taken on the Seiſin and Diſſeiſin. 7 *H.* 5. 7. *a.*

(*b*) This Writ lies not againſt the Lord where a Recovery in an Action is had by him. 38 *Ed.* 3. F. *Droit* 32.

doing

But otherwiſe in Aſſiſe of Rent, or in a Writ of Reſcous or *Ceſſavit*; for the Tenure is traverſable in theſe Writs. 12 Ed. 4. 7. 22 Aſſ. 68. Thorpe. V. 26 H. 8. 6. 7 Ed. 4. 28. 16 Ed. 4. 11. 20 Ed. 4. 17. 10 H. 7. 11. 26 H. 8 6. Com. 45. & 94.

doing of other Services which he ought not to do unto the Lord; then the Tenant may ſue this Writ: For by Incroachment of Rent by the Lord by Payment of the Tenant, the Tenant ſhall not avoid the ſame in an *Avowry* by the Lord for that Rent which is ſo incroached. But if the Lord do in- H croach other Services which the Tenant of Right ought not to do unto him, as Homage or Eſcuage; then the Tenant may avoid this Incroachment in Avowry by the Lord for theſe Services, becauſe the Tenant may traverſe the Manner of the Tenure in that Caſe; as to ſay, that he holdeth of the Lord by Fealty and twenty Shillings Rent only, without that he holdeth by Homage, Fealty and Rent, in the Manner and Form as the Avowry is made: Or the Tenant may ſue this Writ of *Ne injuſte vexes* in that Caſe if he will. And if the Lord do diſtrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of Right he ought to pay, then the Tenant ſhall have an Attachment againſt the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant ſhall count againſt him in this Manner.

The Count.

B. ſheweth unto you, That whereas he holdeth of the aforeſaid *A.* *&c.* as of his Manor of *C.* twenty Acres of Land with the Appurtenances in *W.* by Homage, Fealty, and by the Service of the twentieth Part of a Knight's Fee, and by the Services to render to the ſaid *A.* Half a Pound of Pepper yearly at the Feaſt of *All-Saints*, for all Manner of Services; yet the aforeſaid *A.* over the Services aforeſaid, vexeth the ſaid *B.* and ſuffereth him to be vexed, and of him demandeth and diſtraineth, and ſuffereth him to be diſtrained for nine Shillings *per Annum* of Rent, for which he is damnified unto his Damage of twenty Pounds. And ſo note, that he ſhall declare of Damages in this Writ; and then upon this Count, the Lord who is Defendant ſhall make his Defence, and ſhall defend the Wrong and Force, *&c.* and ſhall count againſt the Plaintiff, and ſhall ſay, that he doth not tortiouſly demand the ſaid Rent of nine Shillings over the other Services, *&c.* for he ſhall ſay, that the ſaid *B.* holdeth the ſaid twenty Acres of Land, *&c.* of him by the ſaid Rent and Services, *&c.* and that he the ſaid *A.* was ſeiſed as well of the ſaid Rents of nine Shillings, as of all the other Services aforeſaid, by the Hands of the aforeſaid *B.* as by the Hand of his very Tenant for the ſaid twenty Acres of Lands with the Appurtenances, as of Fee and of Right in Time of Peace, [11.] *viz.* in the Time of King *Edward*, late King of *England*, *&c.* in taking of the Eſplees, *viz.* Rents, *&c.* And that ſuch is his Right, he is ready to make good by his Body, *&c.*

The Defendant Actor.

And thereupon he who is Plaintiff in the *Ne injuſte vexes* ſhall defend this A Count, and thereof ſhall put himſelf upon the Grand Aſſiſe, and ſo the Miſe ſhall be joined betwixt them in this Writ, which is at firſt but a Prohibition, *&c.* And Judgment final ſhall be given upon this Writ after the Miſe B joined, if it paſs againſt any of the Parties; or if any of them be Nonſuit, or make Default after the Miſe joined. And ſee the Form of the Count and of the Defence in this Writ, in the Book of *Entries of Pleas*, *f.* 90, on the firſt Page.

C And it appeareth *M.* 18 *Ed.* 2. that the (*a*) Feoffee ſhall not avoid Seiſin of Rent had by Incroachment of his Feoffor, nor ſhall he have a Writ of *Ne injuſte vexes*; nor a Man ſhall not have a Writ of *Ne injuſte vexes* againſt the Grantee of the Seigniory, as appeareth *p.* 10 *E.* 3.

14 H. 4. 5 ac. by Thirning, and after 163. See 12 H. 4. cont. *per Hankſ.*

D And *Trin.* 20 *Ed.* 3. it appeareth that Tenant in Tail ſhall not have *Ne injuſte vexes, &c.* but he ſhall plead *, and ſhew the Matter, and ſhall not be eſtopped by the Payment and Seiſin had by the Hands of his Anceſtors; but by a Seiſin had by his own Hands he ſhall be bound during his Time in Avowry, as it ſeemeth. But after the Miſe joined in a Writ of *Ne injuſte*
E *vexes* ſued, if the Parties imparl until another Term and Day, and after at this Term at the Day the Lord, who is the Defendant in the *Ne injuſte vexes*, make Default, now what Proceſs ſhall be awarded thereupon, or if Judgment ſhall be given upon this Default without any Proceſs, *quære.* And ſo if the Plaintiff at another Term after the Miſe joined, and Day given, *&c.* make Default, it ſeemeth he ſhall be Nonſuit, *&c.* See *fol.* 5. D.

* See 20 Ed. 3. F. *Avowry* 131.

Writ de Recto Clauſo.

See 4 Inſt. 269, 270.

F WRIT of *Droit Cloſe* is a Writ which is directed unto the Lord of Ancient Demeſne, which lieth for thoſe Tenants within Ancient Demeſne, who held their Lands and Tenements by Charter in Fee-ſimple, or in Fee-tail, or for Life, or in Dower; if any of them be ouſted of his Lands or Tenements, or diſſeiſed, *&c.* he or his Heir may ſue this Writ of *Droit Cloſe* directed unto the Lord of Ancient Demeſne, commanding him to do Right, *&c.* in his Court; and the Form of the Writ is ſuch:

G Henry *by the Grace*, &c. (*b*) *to his Bailiffs of* J. *greeting: We command you, that without Delay, and according to the Cuſtom of our Manor of* J. *you do full Right to* A. *of one Meſſuage with the Appurtenances in* J. *whereof* B. *unjuſtly deforceth him, that we may hear no more Clamour thereupon for want of Right. Witneſs*, &c. And another Writ thus:

The King to his Bailiffs of the Caſtle of Bamburgh, *greeting: We command*, &c. *that*, &c. *according to the Cuſtom of the Manor of the Caſtle of* Bamburgh, *you do full Right of two Parts of the Fiſhery of the Water of* J. *in* Bamburgh,
H *whereof* B. *deforceth him*, &c. And the Order of putting the Parcels of Houſes, Lands, Meadows and Paſture, *&c.* ſhall be obſerved and uſed, as
I ſhall be done in a Writ of Right Patent. And this Writ may be ſued of Common of Paſture, and for ſtopping of a Way, and ſuch like. And the Writ for the Common is ſuch:

(*a*) See accordant 33 *Ed.* 3. F. *Avowry* 255. or rather 225. And therefore on Special Matter ſhewn he may traverſe, That he takes by the Feoffment, and the Tenant by whoſe Hands the Seiſin was, ſhall not avoid this on the Avowry. 18 *Ed.* 3. F. *Avowry* 217.

(*b*) *Note*; Though the Writ is directed to the Bailiffs, yet the Suitors are the Judges. *Mich.* 17, 18 *Eliz. Rot.* 1381. See *Benl. N.* 254.

Note alſo; Although the Precept be *quod venire faciat* 12, *&c.* yet on the Proteſtation to ſue in Form (or Nature) of an Aſſiſe, the Return of 12 is good, and ſo it ſeems of 24. *Hill.* 19 *Eliz.* 3. *Hayter*'s Caſe, & 44, *Aubrabal*'s Caſe.

K *The King*, &c. *We command you that you do full Right*, &c. *of Common of Paſture in* T. *which belongeth to one Meſſuage and ten Acres of Land, which he holds in the ſame Vill according to the Cuſtom of the Manor aforeſaid, whereof* B. C. *and* D. *unjuſtly deforce him.* And for ſtopping of a Way the Writ is ſuch:

L *The King to the Bailiffs of the Biſhop of* Litchfield *and* Coventry *of the Manor of* C. *greeting:* R. *hath complained to us, that* W. *unjuſtly and without Judgment hath obſtructed a certain Way in* D. *which is within the Precinct of the ſame Manor, to the Nuſance of one Meſſuage which the ſaid* R. *holds according to the Cuſtom of the Manor aforeſaid in the ſame Vill: And therefore we command you, that having called before you the Parties aforeſaid, and having heard their Reaſons, from hence thereupon you* (*a*) *cauſe to be done to the ſaid* R. *due and ſpeedy Fullneſs of Juſtice in the Premiſſes, as hath been uſed to be done according to the Cuſtom of the Manor aforeſaid.*

M And note, that the Demeſne Lands of a Manor, and the Manor itſelf, which is called Ancient Demeſne, is pleadable at the Common Law; as a Man ought to ſue his Action for the Manor, and for the Lands, which are Parcel of the Manor, at the Common Law and in the Common Pleas. But if a Man will ſue for the Lands which are holden of the Manor, which are in the Hands of a (*b*) free Tenant who holdeth of the Manor, for theſe Lands he ought to ſue this Writ of *Droit Cloſe*, directed unto the Lord of the Manor, and there he ſhall make his Proteſtation to ſue in that Court the ſame Writ, in the Nature of what Writ he will declare. And the Form of Entry when ſuch Writ is brought in Court, is ſuch:

N *At this Court cometh* R. N. *by* Nicholas B. *his Attorney (by the Letters Patent of the ſaid* R.) *and hath delivered to the aforeſaid Bailiffs a certain Cloſe Writ of the Lord the now King, directed to the ſame Bailiffs, to be executed in Form of Law according to the Cuſtom of the Manor aforeſaid, the Tenor whereof followeth in theſe Words:*

Henry, *&c. to the Bailiffs of* J. *of* S. *greeting: We command you, that juſtly and without Delay, and according to the Cuſtom of the Manor of* G. *of* S. *you do full Right to* Robert N. *of two Meſſuages*, &c. *in* W. *and* H. *of which* P. *and* C. *unjuſtly deforce him, that we may hear no more Clamour thereupon for want of Right*, &c. *And upon this the aforeſaid* Robert N. *finds Pledges of proſecuting his Writ aforeſaid, to wit*, T. *and* W. *and proteſteth to proſecute that Writ in the* [12.] *ſame Court in Form and Nature of a Writ of Aſſiſe of Novel Diſſeiſin at the Common Law, according to the Cuſtom of the Manor aforeſaid, ſaying, That the aforeſaid* P. *and* C. *unjuſtly and without Judgment have diſſeiſed him of his free Tenement in* W. *and* H. *to wit, of the Tenements aforeſaid with the Appurtenances, after the firſt*, &c. *And he thereupon prayeth Proceſs to be made according to the aforeſaid Cuſtom of the ſame Manor*, &c. *Therefore according to the Cuſtom of the ſame Manor* T. H. *the Under-Bailiff of the Manor and Miniſter of this Court, is commanded, that he cauſe thoſe Tenements to be reſeiſed of the Chattels which were taken therein, and the ſame Tenements with the Appurtenances to be in Peace*

(*a*) But *Note*; Some Actions which are ſuable there (*i. e.* in the Manor Court) only, are ſuable by way of Plaint, as Replevin, Account againſt a Guardian in Socage; and ſo it ſeems of a Writ of *Meſne*. See 21 *Ed.* 3. 10.

(*b*) And *Note*; Lands that are Frank-fee may be held of a Manor that is Ancient Demeſne. See 11 *H.* 4. 86. *per Cur'*. Yet if Frank-fee be recovered in a Court of Ancient Demeſne, it is a Diſſeiſin. 30 *Ed.* 3. *Aſſ.* 3. 4 *H.* 6. 79.

until at the next Court to be held before the aforeſaid Bailiffs and Suitors of the ſame Court, to wit, on Thurſday *next coming, here, to wit, at* S. *and in the mean time that he cauſe twelve free and lawful Men of the Neighbourhood of* W. *and* H. *aforeſaid, within the Precinct of the Manor aforeſaid, to view the Tenements aforeſaid, and to cauſe their Names to be put in the Writ, and that he ſummon them by good Summoners, that they be then here, to wit, at* S. *ready to make Cognizance thereupon; and that he put by Gages and ſafe Pledges, the aforeſaid* P. T. *his Bailiff, if he ſhall not be found that he be then here at* S. *to hear that Cognizance,* &c. *And that he then have there the Names of the Pledges, the Summoners, and the ſaid Precept to him thereupon directed. And the ſame Day is given to the aforeſaid* R. N. &c.

See all this Form to make Proteſtation in the Book of Entries of Pleas, *Fol.* 115. And then at the Day of the Precept and Proceſs returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other Matter, in ſuch Form as ſhall be in an Aſſiſe at the Common Law. And if the Proteſtation be made in the Nature of another Writ, then the Precept ſhall be according unto the Nature of the Proceſs which is given in ſuch Writ; and the Tenant when he cometh in ſhall plead as he ſhall do in ſuch Writ ſued againſt him at the Common Law, for the Nature of the Proteſtation doth alter and change the Manner of Pleading for the Tenant.

A And if falſe Judgment be given in this Writ, the Party Tenant or Demandant may ſue a Writ of falſe Judgment thereupon. Poſt. 18.

B But he who holdeth Land in Ancient Demeſne by Copy of Court-Roll, at the Will of the Lord, who is called Tenant by baſe Tenure, if he be ouſted of his Lands or Tenements there in Ancient Demeſne, he ſhall not have this Writ of *Droit Cloſe*, but he ought to (*a*) ſue by Bill in the Court of the Lord of the Manor, and ſhall make Proteſtation to ſue there in the Nature of what Writ he will. But if falſe Judgment be given againſt him in that Court, he ſhall not have a Writ of falſe Judgment thereupon at the Common Law, nor other Remedy; but to ſue unto the Lord by way of Petition, as it appeareth in 14 *H.* 4. For thoſe who hold their Lands in baſe Tenure in Ancient Demeſne, or by the Rod, hold them in Villenage, and they ſhall not have ſuch Writ of *Droit Cloſe*, nor a Writ of (*b*) falſe Judgment, *&c.* See the Statute of 1 *R.* 2. *cap.* 6. of that Matter. Lit. 6. acc. 14 H. 4. 34. 7 Ed. 4. 19.

C And this Term, which is now at this Day called Copy-tenants, or Copyholders, or Tenants by Copy, is but a new found Term, for of ancient Times they were called Tenants in Villenage, or of baſe Tenure; and that appeareth by the ancient Tenures, that thoſe who held by the Rod, or in baſe Tenure, or by Copy of Court-Roll, were then called and named Tenants that held in the Villenage: For Tenants by Copy of Court-Roll are not ſpe- *Note,* Copyhold Tenants.

(*a*) See 14 *H.* 4. 34. 1 *H.* 5. 12. *Nat. Brev.* 16.

(*b*) And *Note*; 14 *H.* 4. 34. it was adjudged, That if one recover againſt Tenant by the Verge in Ancient Demeſne by Writ of Right Cloſe, the Tenant ſhall not have a Writ of falſe Judgment, nor aſſign this for Error; for then he ſhould be reſtored to a Freehold which he never loſt, but always continued in the Lord. But it ſeems the Recovery is void, and may be avoided by Plea. 1 *H.* 5. 12. And ſo it is, tho' they are Lands at Common Law. 18 *H.* 6. 28.

cified, nor named by ſuch Name; but yet at that Time there were ſuch Tenants, but then they were called Tenants in Villenage, or of baſe Tenure.

D And when the Writ of *Droit Cloſe* cometh unto the Lord, or unto his Bailiffs, the Lord ought for to hold his Court, and to proceed thereupon according to Law, *&c.* And if the Lord will not hold his Court, then the Demandant may ſue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, *&c.* And if he will not hold it, then the Demandant may ſue an Attachment againſt the Lord directed unto the Sheriff, returnable in the Common Pleas or King's Bench, and thereupon the Demandant ſhall recover his Damages.

And if the Writ of *Droit Cloſe* be directed unto the Bailiffs, *&c.* and they will not hold the Court, then he may ſue ſuch a Writ unto the Bailiffs, commanding them to hold their Court; and if they will not ſo do, he may ſue an Attachment againſt them directed unto the Sheriff, returnable as aforeſaid, *&c.*

E (*a*) And if the Lord himſelf ouſt his Tenant of Lands which are holden of the Manor by Charter in Fee, the Tenant who is ouſted ſhall have this Writ of *Droit Cloſe* directed unto the Lord himſelf, if he will, *&c.* Or in this Caſe he may have an Aſſiſe, or other Writ at the Common Law againſt the Lord of thoſe Lands. But it appeareth by a Rule in the Regiſter, that if the Demandant be defeated of Juſtice in the Lord's Court, that then the Demandant may ſue a Writ directed unto the Sheriff, commanding the Sheriff that he go unto the Court in Ancient Demeſne, and that he take with him four diſcreet Knights in their proper Perſons, to ſee that Right be done unto the Party demandant in this Writ; and if the Sheriff refuſe ſo to do, he may have an *Alias* and *Pluries*, and Attachment againſt the Sheriff in the Common Pleas or King's Bench. But it ſeemeth, that this Writ which ſhall be ſo ſued directed unto the Sheriff, that he ſee Right done to the Demandant, is of little Effect; for by Virtue of this Writ he cannot compel the [13.] Lord to do Right unto the Demandant, as it ſeemeth; *tamen quære:* For if he cannot cauſe the Lord to do Right unto the Demandant in a Writ of *Droit Cloſe*, then it ſhall be in vain to ſue ſuch Writ directed unto the Sheriff, to go unto the Lord's Court, and to ſee that Right be there done. And the Demandant may ſue ſuch Writ directed unto the Bailiffs, or unto the Lord himſelf, commanding them that they do him Right, *&c.* and that they do not delay the Matter, *&c.* And thereupon an *Alias*, a *Pluries*, and *Attachment*, if need be.

(*a*) See 21 *Ed.* 3. 26. Aſſiſe brought by the Tenant againſt the Lord and another, and the other takes on him the Tenancy, and the Lord would have pleaded Ancient Demeſne, and becauſe he was named only as a Diſſeiſor, he could not. See 41 *Ed.* 3. 22. A *Præcipe* brought by a Tenant againſt the Lord in Ancient Demeſne, and two others, and the Lord diſclaims, *&c.* And ſee there, there is the ſame Election of the Tenant, where he brings his Action, or the Lord diſſeiſes him.

Quære, If the Tenant recovers againſt the Lord at Common Law, if ever the Lands can be Ancient Demeſne again.

A And if a Plea be removed in the County, the Demandant may ſue ſuch Writ directed unto the Sheriff, that he proceed in the Plea, unto Judgment, and to do Right; and upon that he ſhall have an *Alias*, a *Pluries*, and *Attachment*, againſt the Sheriff, if he will not do accordingly.

B And note, That the Demandant in a Writ of *Droit Cloſe* cannot (*a*) remove the Plea out of the Lord's Court for no Cauſe, *&c.* nor the Tenant remove the Plea out of the Ancient Demeſne, if not for Cauſes which prove the Land to be Frank-fee, and not Ancient Demeſne; and the Form of the Writ of *Recordare* to remove the Plea out of Ancient Demeſne is ſuch: 34 H. 6. 35. 6 H. 4. 1. 50 Ed. 3. 24. 1 H. 7. 30.

C (*b*) *The King to the Sheriff of* Lincolnſhire, *greeting: We command you, that having taken with you four diſcreet and lawful Knights of your County, you go in your proper Perſon to the Court* B. *of* C. *and in the full Court you cauſe to be recorded the Plaint, which is in the ſame Court by our little Writ of Right, between,* &c. *of one Meſſuage with the Appurtenances in* J. *and have you that Record before our Juſtices,* &c. *and to the Parties,* &c. *And have you there the Names of the aforeſaid four Men, and this Writ and the other Writ,* &c. *Becauſe the aforeſaid* A. *in pleading in the Court aforeſaid, hath produced the Charter of Lord* Henry *formerly King of* England, *our Progenitor and Great Grandfather, by which our ſaid Great Grandfather enfeoffed* W. *the Father of the afore-*

(*a*) See accordant, *per Cur'*, 34 *H.* 6. 35. *Sed contra*, 2 *Ed.* 3. 29. But *ibid.* 35, ſeems to agree. See alſo 3 *H.* 4. 14. Where he is but Bailiff, he may maintain the Plea, or if he be Party, the Parol ſhall be remanded; yet if the Bailiff be Couſin and Heir to the Plaintiff, it is good Cauſe of Removal; yet ſee 6 *H.* 4. 1. That he was Bailiff of the Robes to the Plaintiff was held no Cauſe of Removal, *per Cur'*; and therefore remanded; and if the Court does not do Right, he is put to his Writ of falſe Judgment. 12 *H.* 4. 17. 13 *H.* 4. 14. Nor is it Cauſe of Removal, that the Proceſs there was miſawarded. 9 *H.* 6. 25. Nor when the Bailiff is Demandant. 11 *H.* 6. 10. *Per Cur'*.

(*b*) *Note*; On a *Recordare* from a Court of Ancient Demeſne, if the Record be made up and removed, but the Cauſe of Removal appears to the Court to be inſufficient, the Tenant ſhall not be eſſoined, 34 *H.* 6. 35. *per Cur'*; but if the Cauſe be ſufficient, the Tenant may be eſſoined. 14 *Ed.* 3. *Eſſoin* 10. 19 *Ed.* 3. *Eſſoin* 23. 23 *Ed.* 3. *Eſſoin* 183. But ſome held the contrary. For if the Cauſe be true, the Writ ſhall abate, if not true, it ſhall be remanded. 8 *Ed.* 3. 7. And it was ſaid, if the Tenant be eſſoined on his Writ of falſe Judgment, [*Recordare*] and the Demandant admits it, the whole Matter in the Lord's Court is diſcontinued. 2 *Ed.* 3. 35. Yet ſee in the ſame Folio an Eſſoin allowed for him who brought the *Recordare*, and a Feme Plaintiff was received in a *Recordare*.

If the Tenant who brings a *Recordare* makes Default, the Plea ſhall be remanded, and therefore in a Writ of Right againſt divers by ſeveral Summons, if they join in a *Recordare*, and the Record is removed, and one of them is nonſuited, it extends to all. 2 *Ed.* 3. 29. 10 *Ed.* 3. 59. But this is doubted. 18 *H.* 6. 28. *vide Kel.* 115.

If the Record be not fully ſent, although at the Day prefixed, the Tenant makes Default, or the Demandant, this makes no Matter, as it ſeems. But if the Record be fully ſent, if at the Day the Tenant makes Default, the Record ſhall be remanded, and if the Demandant makes Default, the Writ of Right ſhall abate. See 17 *Ed.* 3. 44. 27 *Ed.* 3. 77. 18 *Ed.* 3. 3.

If at the Day no Record be made, nor the Original ſent, although the Demandant makes Default, he ſhall not be nonſuited, but a grand Diſtreſs ſhall go againſt the Bailiff, to deliver the Writ, and againſt the Suitors, to make the Record, but the Non-appearance of the Demandant ſhall be recorded. 27 *Ed.* 3. 77. If the Record be made, but the Original is not ſent (or returned) if the Demandant makes Default, it ſhall be adjudged a Nonſuit, if an Original be neceſſary. 8 *Ed.* 3. 7. 10 *Ed.* 3. 59. *quod nota.* 17 *Ed.* 3. 44. 13 *Ed.* 3. 9. *quod vide.* 18 *Ed.* 3. 3.

ſaid A. *(whoſe Heir he is) of the Meſſuage aforeſaid, as it is ſaid; wherefore the ſame* A. *ſays, that he neither can nor ought to anſwer without us: Let Execution of the Writ be done, if the Cauſe be true; and the aforeſaid* A. *prays* 9 H. 6. 34. *this, and otherwiſe not.* There is another Cauſe in the Regiſter, thus: *Becauſe he claims to hold the Tenements aforeſaid at the Common Law,* &c. But then in the Common Pleas, when the Record is removed, he ought there to ſhew ſome ſpecial Matter to prove the Lands and Tenements to be Frank-fee, and not Ancient Demeſne, otherwiſe the Plea ſhall be ſent back unto the Lord's Court: But to ſhew a (*a*) Fine levied in the King's Court of the ſame Land; or a Recovery had in the King's Court in a *Præcipe quod reddat, &c.* is a good Cauſe to prove the Lands 40 Ed. 3. 4. to be Frank-fee; and if he claim the Land by the Feoffment and the King's 50 Ed. 3. 24. Charter, or by the Feoffment of Charter of the Lord of the Manor; or if he 34 H. 6. 35. 6 H. 4. 1. claim to hold them of the King, as of another Manor of the Honour, *&c.* and not to hold them of the ſame Manor; or if he ſay, That in an Aſſiſe brought before of the ſame Lands or Tenements at the Common Law againſt another Tenant, that the Tenant ſaid that they were Ancient Demeſne, and that they were Frank-fee, *&c.* whereupon it was Regiſter 11. Br. Remove de Plea 35. found by the Aſſiſe that they were Frank-fee, *&c.* And another Cauſe appeareth in the Regiſter, becauſe that there are not any Suitors in the Lord's Court of Ancient Demeſne to do Right, *&c.* But *quære* if this be a ſufficient Cauſe or not. See 4 *Inſt.* 270.

A Writ of Right Cloſe is brought, and pendent the Writ the Tenant accepts a Fine *Sur conuſance de Droit come ceo que il ad, &c.* yet the Land remains Ancient Demeſne, as to that Action, becauſe he hath affirmed his Plaint before the Fine; and ſo it was holden, 12 *H.* 7. *Rot.* 103.

11 *Ed.* 3. *Cauſe de remover, Plea* 16. If the Cauſe aſſigned may be tried in Ancient Demeſne, it ſhall not be removed.

vid. en 17 Ed. 3. Cauſe de remov. 1. Becauſe there were but ſix Suitors, and one Plaint. and the other Def. therefore removed: So four not ſufficient.

If

(*a*) If a Fine on Render be levied of Ancient Demeſne, it ſeems that the Nature of the Land is changed without any Execution. 40 *Ed.* 3. 40. *per Thorp* and *Thirn.* So if a Judgment rendered, *&c. Vide* 2 *Ed.* 4. 28. But 18 *Ed.* 2. *Ancient Demeſne* 37. If a Fine be levied *Sur conuſance de Droit,* and Releaſe, hereby there is no Tranſmutation of the Poſſeſſion, nor is the Tenancy altered as to the Lord, *&c.* (or any Stranger to the Fine.) 40 *Ed.* 3. 4. *per Candiſh,* but *Belkn. contra.* 18 *Ed.* 2. *Ancient Demeſne* 37. But as to the Parties themſelves, the Tenancy is changed by way of Eſtoppel, *per Wilby*; and ſo it was adjudged. For if ſuch Conuſor brings an Aſſiſe againſt the Conuſee, or *è converſo,* no Exception of Ancient Demeſne lies. 21 *Ed.* 3. 25. And therefore if the Lord be a Party, by ſuch Fine the Tenancy is changed, and alſo he ſhall never have a Writ of Diſceit. 30 *Ed.* 3. 13. *b.* or 17. *per Green. Vide* 29 *Ed.* 3. 36. at the *Diſtringas Sectatores,* the Record was received by Attorny made by the Suitors by Writ out of Chancery.

And *Note*; Although the Fine be levied by a Diſſeiſor, yet the Diſſeiſee, as it ſeems, ought to ſue at Common Law, but when he has recovered the Tenements, they ſhall be Ancient Demeſne again, 3 *Ed.* 3. 33. and therefore if in ſuch Caſe Judgment be given in the Court of Ancient Demeſne, and the Recoverer enters, in Treſpaſs brought againſt him for this Entry, he cannot juſtify by Force of the Recovery there, for it was *coram non Judice.* 7 *H.* 4. 3. accordant, where theſe Particulars are alſo agreed, *viz.*

* Vide poſt. 20. A.

* 1*ſt.* If *A.* recovers againſt *B.* in a Writ of Right, in Nature of an Aſſiſe in Ancient Demeſne, where in Truth there is a Fine levied of the ſame Tenements, and the Cattle of *B.* are thereupon taken in Execution, he ſhall re-

cover

D If a Frank-tenant of Ancient Demeſne, who holdeth his Tenements by Knights Service and in Fee, be ouſted and diſſeiſed of his Lands or Tenements, he ſhall ſue at the Common Law, and not in Ancient Demeſne, for no Lands are Ancient Demeſne, but Lands holden in Socage.

Poſt. 14. 26 H. 8. 4. for Lands in Gavelkind, ſee 14. b.

E And a Man ſhall have a Bill of *Freſh Force* within forty Days in the Lord's Court of Ancient Demeſne, for the Lands after the Diſſeiſin, and without ſuing any Writ thereupon; as a Man ſhall have Lands in a City or Borough: And there in that Caſe, if the Tenant hath any Matter to prove the Lands to be Frank-fee, he ſhall have a *Recordare* to remove the Plea out of Ancient Demeſne into the Common Pleas, *&c.*

26 H. 8. 1. 4. 8 H. 7. 11. 3 H. 6. 34. 34 H. 6. 35. or 44 Ed. 3. 10. 4 Inſt. 270. contra.

F And although the Plea in Ancient Demeſne be there without Writ, *&c.* if the Tenant remove the Plea out of Ancient Demeſne by a (*a*) *Recordare*, and for Cauſe ſhewed in the Writ, if the Cauſe be not good, the Tenant in the Common Pleas ſhall not ſhew any new Cauſe to retain the Plea in the Common Pleas: But if the Cauſe in the Writ be, *which he claims to hold at the Common Law*, then in the Common Pleas he may ſhew what Cauſe he will to retain the Plea there; which Cauſe ſhall prove the Tenements to be Frank-fee.

21 Ed. 3. 32. Br. Auncient Demeſne 18. or 34 H. 6. 35. 1 H. 7. 30. 50 Ed. 3. 24. the Lord made a Leaſe for Life, that is a good Cauſe.

G And in Ancient Demeſne, if the Demandant and Tenant put themſelves upon the (*b*) Grand Aſſiſe, or the Tenant vouch a Foreigner, or plead a Foreign Plea, which cannot be tried in the Lordſhip there; then a *Superſedeas* ſhall be granted out of the Chancery, directed unto the Lord of Ancient Demeſne, or his Bailiffs, if the Writ were directable to the Bailiffs, that they ſhould ſurceaſe, *&c.* And the Party Defendant ſhall ſue his Writ of *Warranty* of *Charter* againſt the Vouchee, *&c.*

1 H 7. 30. *per Tounſend.*

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cover in a Replevin, becauſe it was *coram non Judice*; nay, although the Manor was in the King's Hands at the Time of the Fine levied.

But, *2dly*, It is there admitted, that if Part of the Tenements ſo recovered be Ancient Demeſne, of which no Fine was levied, in ſuch Caſe the Bailiff may juſtify the Taking of the Defendant's Cattle in Execution in any Place within the Manor, although that ſuch Place was not Ancient Demeſne. 7 *H.* 4. 28, 29. Yet ſee 8 *Ed.* 4. 6. If one recovers, in a Court of Ancient Demeſne, Lands, whereof Part are Ancient Demeſne, and of the Reſidue a Recovery had been before had in the King's Court. If the Party brings Debt for the Damages recovered, he ſhall be barred of the Whole, becauſe the Damages are to be given intire.

(*a*) *Note*; If the Cauſe in the *Recordare* be ſpecial, as, *For that he claims to hold of the Infeoffment of* J. S. *Lord of the Manor*, &c. there he cannot ſhew another Cauſe. But if the Cauſe be general, *viz. For that he claims to hold at the Common Law*, there may ſhew the Cauſe ſpecially. 9 *H.* 6. 34, 35.

Yet ſee where the Tenant removed the Plea, for that he claimed by Preſcription to hold at Common Law, and yet in *C. B.* he was received to wave this Cauſe, and to ſhew a Confirmation by the Lord. 21 *Ed.* 3. 32.

(*b*) The Plea ſhall be removed to be tried, and afterward remanded to be adjudged, 14 *H.* 4. 26. See 19 *H.* 6. 53. on a Foreign Voucher, Day was given to the Party himſelf in *C. B.* to determine his Warranty, and there a Summons *ad Warrantizand'* iſſued, and the Vouchee came and vouched over *B.* who entered into Warranty, and vouched over, 5 *Ed.* 6. *Dyer* 69. See the Tenant in a Writ of Right Cloſe ſued in Nature of a Writ of Right at Common Law, and puts himſelf on the Grand Aſſiſe; and therefore the Plea was removed *per Recordare*; but it was afterwards remanded by the Court, for by the Cuſtom they may elect a Jury inſtead of the Grand Aſſiſe. *Stafford*'s Caſe, *Dyer* 111. See 1 *H.* 7. 29. *contra.*

And

12 *H.* 7. *Rot.* 103. It is holden, that if they proceed after the Record removed, and award Execution, that it is not void. 16 *Ed.* 3. 3. *Proceſs* 167. The Party had *Audita Querela* againſt the Judges upon that Caſe: And 17 *Ed.* 3. *ibid.* 186. it was holden that the Sheriff ſhall be puniſhed for his Contempt.

And if the Sheriff do remove the Record in Ancient Demeſne by *Recordare* H in the Common Pleas, and afterwards the Bailiffs in the Court of Ancient Demeſne proceed in the Plea (notwithſtanding the Removing of the Record) then the Tenant may ſue a *Certiorari* directed unto the Juſtices of the Common Pleas, to certify the Tenor of the Record into the Chancery, and of this Removement; and upon the Certificate into the Chancery, the Tenant ſhall have an (*a*) *Attachment* againſt the Bailiffs, who proceeded in the Plea directed unto the Sheriff, for to arreſt them, returnable in the Common Pleas, to anſwer unto the King, and alſo unto the Tenant who ſued forth the *Recordare.*

[14.] But in Ancient Demeſne, if the Tenant vouch a Foreigner to Warranty, then the Tenant ought to ſue his Writ of *Warrantia Chartæ* returnable in the Common Pleas againſt the (*b*) Vouchee, and upon this Writ ſued to purchaſe a *Superſedeas* directed unto the Bailiffs of Ancient Demeſne, commanding them to ſurceaſe until the Plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailiffs proceed after ſuch Writ ſued forth, and A directed unto them, the Tenant who ſued the Writ may have an *Attachment* of them directed unto the Sheriff, &c. that he do attach them to anſwer in the Common Pleas at a certain Day, &c. as well unto the King as unto the Party, for the Contempt, &c. But if the Plea of *Warrantia Chartæ* be diſcontinued in the Common Pleas, then the Demandant in the Writ of *Droit Cloſe* may ſue a Writ out of the Chancery directed unto the Juſtices of the Common Pleas, to certify the King in the Chancery, if the Plea of *Warrantia Chartæ* be pendent or diſcontinued, or not, ſo that if it be diſcontinued, &c. or determined, he may ſend unto the Bailiffs of Ancient Demeſne, that they proceed in the Plea.

Vide 13. D. 29 R. 2. Ancient Demeſne 41.

Sokemans.

And if the Tenant claim to hold the Lands of the Lord in Ancient Demeſne by Knights Service, &c. the ſame is a good Cauſe for to remove the B Plea, becauſe that Lands which are holden of the Manor, which ſhall be taken Ancient Demeſne, ſhall not be holden of the Lord by other Services than Socage; for the Tenants in Ancient Demeſne are called *Sokemans*, that is to ſay in *Engliſh*, Tenants of the Plough.

50 Ed. 3. 6. per Sidenham, contr. if he refer but Socage Tenure.

And therefore if the Lord of a Manor in Ancient Demeſne, before the C Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the Parcel of the Lands of the Manor, to hold of him by Knights Service, ſuch Tenant ſhall not have a *Monſtraverunt*, if he be diſtrained for other Services than of Right he ought to do, becauſe his Lands are not Ancient Demeſne of the King, and yet they are holden of the Manor which is Ancient Demeſne: But

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(*a*) Where the Plaintiff ſhall have a ſpecial Action on the Caſe, and recover Damages, and yet the Proceedings be void, &c. See 14 *Ed.* 3. F. *Action ſur le Caſe* 39.

(*b*) *Vouchee.* See 13 *Ed.* 1. *Voucher* 269. and after the Warranty determined they ſhall give Day to vouch by Prefixion in the Court of Ancient Demeſne, and the ſame Law for a Court Baron. See 35 *Ed.* 3. *Voucher* 316.

it is intended of ſuch Tenures which ſhall do the Services of the Plough, *viz.* to plough and till the Lord's Lands, to mow the Lord's Meadows, or other ſuch like Services as are for the maintaining of the King's Suſtenance or Victuals, and his Subjects; and for ſuch Services ſuch Tenants have ſuch Liberties and Privileges in the Law, that they may the more quietly uſe their Huſbandry, and do their Services.

Writ de Monſtraverunt.

D THE Writ of *Monſtraverunt* lieth for the Tenants of (*a*) Ancient Demeſne who hold by free Charter, and not for thoſe Tenants that hold by Copy of Court Roll, or by the Rod, according to the Cuſtom of the Manor, at the Will of the Lord. And theſe Tenants ought to be Tenants which hold of a Manor which was in the Hands of S. *Edward* the King and Confeſſor, or in the Hands of King *William* the Conqueror; which Manors are called Ancient Demeſne of the King, or the Ancient Demeſne of the Crown of *England.* And to thoſe Tenants (who hold of ſuch Manors) there
E are many and divers Liberties, Gifts and Grants by the Law; as to be (*b*) quit of Toll, and Paſſage, and ſuch Impoſitions which Men ſhall demand of them for the Goods or Chattels ſold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon Ancient Demeſne, as he may for ſome great Cauſe, whenſoever it ſeemeth good unto him. And alſo Tenant in Ancient Demeſne ought to be acquitted of the Payment of the Expences of the Knights which came to Parliaments, and alſo they (*c*) ought not to be impanelled or put upon Juries or Inqueſts in the Country out of their
F Manor or Seigniory of Ancient Demeſne, if they have not other Lands at the Common Law, for which they ought to be charged, *&c.* And if ſuch Tenants, or any of them who hold of the Manor of Ancient Demeſne, be diſtrained to do unto their Lords other Services or Cuſtoms than they or their Anceſtors have uſed to do, then they may ſue this Writ of *Monſtraverunt* directed unto the Lord, commanding him that he do not diſtrain them to do other Services or Cuſtoms than they have uſed to do: Or they may have

49 Ed. 3. 22.

19 *H.* 6. 66. *per Newton,* Tenants in Ancient Demeſne ſhall be quit of Toll of Things which they ſell, which are ariſing of their Lands, and ſo of all Things which they buy, which are for the Manurance of the Land; but *quære* if they ſhall be quit for all Things bought and ſold.

Vide 161. They ſhall be quit of Suit to Leets and Hundreds. *Vide* 22 *El. Dyer* 377. *Regiſter* 181. *Br. Ancient Demeſne* 44. 7 *H.* 6. 35. *Martin.* acc'.

40 Ed. 3. 44. *Quære* if they ſhall have this Writ without being diſtrained.

(*a*) And therefore a Tenant of a newly approved Waſte, though it be aliened by the King, and to hold of the Manor by the Cuſtom of the Manor, is (not) Ancient Demeſne. 21 *Ed.* 3. 56. *per Thorp.* See *Hoveden* 460. *Willielmus ſenior Anno* 1036. *Totum Angl. deſcribi fecit.* And ſee *Ingulphus* 870. and 908. *pro Diviſione Comitatuum. Vide bene* 49 *Ed.* 3. 22.

(*b*) Acquitted from Amerciaments of the County. *Clauſ.* 12 *H.* 3. *m.* 11. See 32 *Ed.* 3. *Monſtraverunt* 6. and *Rot. Parl.* 6 *Ed.* 3. *No.* 3.

(*c*) *i. e.* If they have not other Lands in Frank-fee. 42 *Aſſ.* 8.

this Writ of *Monſtraverunt* directed unto the Sheriff; and that is where the Writ of *Monſtraverunt* is firſt ſent unto the Lord, and that he do not diſtrain his Tenants, *&c.* Or they, upon this Writ ſued and directed unto the Lord, may have and ſue another Writ directed unto the Sheriff, rehearſing, That where he hath ſent his Writ unto the Lord of Ancient Demeſne, that he ſhould not diſtrain his Tenants, *&c.* and if the Lord will not do it, and ſuffer the Tenants to be in Peace, that then the Sheriff ſhall do it, and cauſe the Lord to ſuffer the Tenants to be in Peace, and that he do not diſtrain them for other Services than of Right they ought to do. And the Form of the Writ directed unto the Lord is ſuch: (*a*)

40 Ed. 3. Theſe Words prove that they may have this Writ before Diſtreſs.

[15.]

The King to the Abbot of C. *greeting: Your Men of the Manor of* I. *which is* G *of the Ancient Demeſne of the Crown of* England, *as it is ſaid, have ſhewed unto us, that you require of them other Cuſtoms and other Services than they ought to do, and than their Anceſtors, Tenants of the ſame Manor, have been accuſtomed to do in the Times wherein that Manor was in the Hands of our Progenitors, formerly Kings of* England, *or in our Hand. And therefore we command you, that you require not, or permit to be required from the aforeſaid Men, other Cuſtoms and other Services than they* (*b*) *ought to do, and than their Anceſtors aforeſaid have been* (*b*) *accuſtomed to do in the Times aforeſaid. And unleſs you ſhall do this at our Command, we command* A. *our Sheriff of* Lincolnſhire, *to do it. Witneſs,* &c. And upon this Writ they may ſue another Writ of *Monſtraverunt* di- A rected unto the Sheriff, which ſhall be in this Form: *The King to the Sheriff of* Lincolnſhire, *&c. The Men of the Abbot of the Manor of* I. *which is of the Ancient Demeſne of the Crown of* England, *as it is ſaid, have ſhewed unto us, that the ſame Abbot requires of them other Cuſtoms and other Services than they ought to do,* &c. (as above, *until) in our Hand. Wherefore we commanded the ſame Abbot, that he ſhould not require, or permit to be required from the aforeſaid Men, other Cuſtoms or other Services than they ought to do, and than their Anceſtors aforeſaid have been accuſtomed to do in the Times aforeſaid. And therefore we command you, that unleſs the ſame Abbot ſhall do this our Command, that you cauſe it to be done, that we may hear no more Clamour thereupon for want of Juſtice,* &c.

And it ſeemeth, that by this Writ directed unto the Sheriff the Sheriff may B charge the Lord, that he do not demand nor diſtrain them for other Services than they ought to do, and that the Sheriff may make Reſiſtance and Reſcous unto the Lord, if he diſtrain the Tenants for other Services, *&c.* and that the Sheriff may take the Power of the County to reſiſt the Lord in ſuch

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(*a*) See this Writ of *Monſtraverunt* founded on a Petition and Ordinance of Parliament. 18 *Ed.* 1. 27.

(*b*) *Quære*, If he ſhall not have a *Monſtraverunt* where his Eſtate is confirmed, to hold by leſs Services. 49 *Ed.* 3. 7. See 21 *Ed.* 3. 33. F. *Cauſe de remover Plea* 18. Where it is adjudged, that it is not made Frank-fee by the Confirmation. But *Wilby* held the contrary. *Hill* ſaid, no *Monſtraverunt* can be, *&c.* See 30 *Ed.* 18. where it is argued, if the Lord in Ancient Demeſne confirm the Eſtate of his Tenant to hold by 2 *s. freely and quietly from all other Cuſtoms,* and held by *Green* to be Frank fee, and on a Diſtreſs for more Services, the Tenants ſhall be aided in Replevin. But by *Wilby* and others, it continues Ancient Demeſne, and he ſhall have a *Monſtraverunt,* and Count upon his Caſe.

Caſe, or the Sheriff may command the Neighbours, who dwell next to the Manor, that they reſiſt and do Reſcous unto the Lord, if he will diſtrain his Tenants, *&c.* And it ſeems they may juſtify the ſame by the Commandment C of the Sheriff, if the have ſuch a Writ ſent unto him, *&c.* And after the Writ directed unto the Sheriff, if the Lord diſtrain, the Tenants may ſue an *Attachment* againſt him, returnable in the Common Pleas or the King's Bench, to anſwer to them for this Contempt; and if it be found for them, they ſhall recover their Damages.

D And note, that the Writ of *Monſtraverunt* ſhall be ſued by many of the Tenants without naming any of them by their proper Names, but generally, *Monſtraverunt nobis homines, &c.* But in the Attachment againſt the Lord by the Tenants, the Tenants ought to be named by their proper Names, thus: Com. 129. 8 H. 6. 26. 1 H. 5. 13.

(*a*) *The King*, &c. *If* A. *of* B. C. *of* F. *and the Men of the Abbot* M. *of the Manor of* I. *which is of the Ancient Demeſne of the Crown of* England, *as it is ſaid, ſhall make you ſecure*, &c. *then put*, &c. *the aforeſaid Abbot, that he be before us*, &c. *whereſoever*, &c. *to ſhew why he requireth of the aforeſaid Men other Cuſtoms and other Services than they ought to do, and than their Anceſtors, Tenants of the ſame Manor, have been accuſtomed to do in the Times wherein that Manor was in the Hands of our Progenitors, formerly Kings of* England, *or in our Hand, contrary to our Prohibition* (if the Caſe be ſo). *And have you there the Names of the Pledges and this Writ. Witneſs*, &c.

E And there is another Writ of *Monſtraverunt*; where the Tenants of any Hamlet, which Hamlet is Parcel of a Manor of Ancient Demeſne, are diſtrained by the Lord, they ſhall have ſuch Writ:

The King, &c. *Your Men of the Hamlet of* I. *which is a Member of the Manor of* B. *which is of the Ancient Demeſne of the Crown of* England, *as it is ſaid*, &c. *have ſhewed unto us*, &c.

F And it ſeems, that in the Writ of *Attachment* he ought or may name all thoſe Tenants by their proper Names which are diſtrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by G their proper Names, but in the Generality, *And the Men*, &c. And if one of thoſe, who is named by his proper Name, will not ſue, *&c.* he ſhall be ſevered, *&c.* And he that is *Nonſuit* ſhall not grieve his Companions. And it ſeemeth, that every one ſhall recover his Damages *ſeverally*, (*b*) *becauſe they are ſeverally diſtrained*, and one may be more damnified than another, *&c.*

H And one Tenant may ſue the Writ of *Attachment* in his own Name by his proper Name, and in the Name of the other Tenants, by general Words, *&c. And the Men*, &c.

(*a*) In a Writ of Admeaſurement it is not neceſſary to name all the Tenants; for they ſhall be admeaſured, though not named. 8 *H.* 6. 26. And in an Action on the Statute of *Winton*, it is not neceſſary to name all the Inhabitants of the Hundred, but only ſome in certain. And ſo in a *Recordare* adjudged, 6 *H.* 8. and alſo 3 *Eliz.* But the Juſtices ſhall direct Judgment to be for the Plaintiff notwithſtanding. See 6, 7 *Eliz. Dyer.*—

(*b*) *Note*; They may make joint or ſeveral Counts. 39 *Ed.* 3. 6. *per Belkn.* See *infra* 16. A.

And if the Tenants do ſue an *Attachment* againſt the Lord, becauſe he diſtrained them after the Writ of *Monſtraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord diſtrain them again by their Goods; then the Tenants ſhall have a ſpecial Writ of *Attachment* againſt the Lord, rehearſing the Matter; and in the ſame Writ the Sheriff ſhall be commanded to re-deliver unto the Tenants their Goods, if the Lord have taken them, *&c.* And this Writ ſhall be ſued only in the Name of thoſe Tenants which are again diſtrained pendent the Suit, and not in the Name of them all, as the other Writ is ſued; and the Writ ſhall be ſuch: I

The King to the Sheriff, &c. *If* A. *and* B. *the Men of the Abbot of* C. *of the Manor of* N. *which is of Ancient Demeſne*, &c. *ſhall make you ſecure*, &c. *then put*, &c. *the aforeſaid Abbot*, &c. *to ſhew why whereas lately at the Proſecution of the ſaid Men ſuggeſting to us, that the aforeſaid Abbot had required other Cuſtoms and other Services than they ought to do, and than their Anceſtors, Tenants of the ſame Manor*, &c. (until *Kings of* England) *We commanded you, that you ſhould put by Gages and ſafe Pledges the aforeſaid Abbot, that he ſhould be before us from* Eaſter *Day in fifteen Days laſt paſt, whereſoever*, &c. *to anſwer the aforeſaid Men concerning the Premiſſes, the ſaid Abbot (pending the ſaid Plea of Attachment before us) hath therefore more grievouſly diſtreſſed the aforeſaid Men, and hath taken from them all their Goods, Chattels and Cattle found in the ſame Manor, and yet detains them from them, whereby they are leſs able to proſecute the ſaid Plea of Attachment, becauſe of Poverty, in Contempt of us and our aforeſaid Command, and to the no ſmall Expence of the aforeſaid Men and the Delay of the Proſecution of their Right, and to the manifeſt Debaſing of their Eſtate. And cauſe the aforeſaid Cattle, Goods and Chattels in the mean time to be delivered to the ſame Men by ſufficient Security. And have there the Names of the Pledges and this Writ. Witneſs*, &c. [16.]

V. ſup. 15. G.
39 Ed. 3 6.
48 Ed. 3. 44.
39 Ed. 3. 6.
rel. Monſtr. 2.
49 Ed. 3.
per Belknap.

And in this Writ of *Monſtraverunt* the Plaintiffs in the Writ of Attachment may count ſeverally, and then they ſhall recover ſeveral Damages. But they may count together in one Count, and declare how they were ſeverally diſtrained, *&c.* and it is not neceſſary to alledge in the Count the Day or the Place where the Lord diſtrained them. And the Form of the Count or Declaration is ſuch: A

A. B. *was ſummoned to anſwer* C. D. *and* F. *and the Men of the aforeſaid* A. *of the Manor of* S. *which is of the Ancient Demeſne of the Crown of* England, *&c. of a Plea, wherefore he requires of them other Cuſtoms and other Services than they ought to do, and than their Anceſtors, Tenants of the ſame Manor, have been accuſtomed to do in the Times wherein that Manor was in the Hands of his Majeſty's Progenitors, Kings of* England, *to the great Damage of the ſaid* C. D. *and* F. &c. *And whereupon the ſame Men, by* T. S. *their Attorny, complain, That whereas their Anceſtors, Tenants of the ſame Manor in the Time when that Manor was in the Hands of Lord* Henry, *formerly King of* England, *Great Grandfather to the Grandfather of the Lord the preſent King, held their Tenements by certain Services, namely, every one of them held one Yard-Land of the ſame Manor*, &c. *by Fealty and the Service of five Shillings, and doing Suit at the Court of the ſaid Manor of* S. *twice in the Year, to wit, at the Feaſt of Saint* Michael *and at the Feaſt of the Paſſover; and if a Writ of Right happened to be pleaded in the ſame Court, by doing Suit in the ſame Court from three Weeks to three Weeks*, &c.

ſo long as that Writ was depending in the ſame Court, and when the Lord the King lays a Tax (or Tallage) upon his Boroughs and his Demeſnes, &c. *for all Services; and they who held more Land of the aforeſaid Manor rendered more Rent,* &c. *And the ſame Tenants have continued this Kind of Eſtate from the Time of the ſame* Henry *the Great Grandfather,* &c. *from King to King, the Progenitors,* &c. *until the Time of the aforeſaid Lord King* Edward *the Grandfather,* &c. *That the aforeſaid* A. *Lord of the Manor aforeſaid, hath diſtrained them the ſaid* C. D. *and* F. *and the other Men,* &c. *to do Suit at the aforementioned Court from three Weeks to three Weeks throughout the whole Year,* &c. *and by laying a Tax (or Tallage) upon them, high and low, at his Will, and requiring Services from them for marrying their Sons and Daughters, and other villainous Services and Cuſtoms, which they ought not nor have been uſed to do; whereupon they ſay they are injured and have ſuſtained Damage to the Value of one hundred Pounds, and thereupon they bring Suit,* &c.

B And whether they ſhall recover ſeverally Damages upon the joint Count, it is a Doubt, yet it ſeemeth reaſonable that they may, becauſe it is ſeveral in its Nature, becauſe they count upon the ſeveral Tenures, *&c.* and how that he hath diſtrained them ſeverally; by which it ſeems but reaſonable, that the Jury do inquire of the Damages ſeverally, if they paſs for the Demandants, or that ſeveral Writs of Inquiry of Damages be awarded in that Caſe, if the Matter be adjudged with the Demandants. But it ſeems no Tenant ſhall recover Damages, but thoſe who are ſpecially named in the Writ of Attachment ſued upon the *Monſtraverunt*, and not to other Men.

C And note, That the Lord of Ancient Demeſne ſhall not be put to anſwer to the Writ of Attachment ſued againſt him upon the *Monſtraverunt*, before the Court be (*a*) certified by the Treaſurer and Chamberlain of the Exchequer, whether the Manor be Ancient Demeſne. And therefore it behoveth the Plaintiffs in the *Monſtraverunt* to ſue forth a ſpecial Writ unto the Treaſurer and Chamberlains of the Exchequer to certify the ſame; and the Writ is ſuch:

49 Ed. 3. 22.
39 Ed. 3. 6.
19 Ed. 3. pl. 5.

The King to his Treaſurer and Chamberlains, greeting: Becauſe for certain Reaſons we are willing to be certified whether the Manor of I. *in the County of* C. *be of the Ancient Demeſne of the Crown of* England *or not, we command you, that having ſearched our* Domeſday *Book, you without Delay diſtinctly and openly make us more certain concerning that which you thereupon ſhall find, under our Seal of our Exchequer, ſending again to us this Writ. Witneſs,* &c. 49 Ed. 3. 22.

D And note, That the Book which is called *Domeſday* Book was made in the Time of S. *Edward*, and all the Lands which were in the Seiſin, and in the Hands of the ſaid S. *Edward* at the Time the ſaid Book was made, are Ancient Demeſne, and the Lands which were in other Hands, and are not named E in the ſaid Book, are Frank-fee: And thoſe Tenants which held in baſe Tenure, as by Copy of Court-Roll, or by the Rod, cannot ſue nor maintain this Writ againſt the Lord: And the Death of one Tenant, nor his Nonſuit, ſhall not (*b*)

2 R. 3. 1.
39 Ed. 3. 6.
44 Ed. 3. 44.
41 Ed. 3. pl. 3.

(*a*) It ſeems, that the Certificate lawfully coming into Court by *Certiorari* and *Mittimus* is authentical and concluſive, though there be no Iſſue joined, whether Frank fee or Ancient Demeſne. 7 *H.* 6. 32. And ſee accordant 39 *Ed.* 3. 6. it is at the Peril of the Plaintiff.

(*b*) The Reaſon is, becauſe as they are ſeveral Tenures, ſo the Torts and Damages are ſeveral, and ſo it is in Error, Attaint and *Audita Querela*; *contra* in a *Ne injuſte vexes.* 1 *H.* 5. 13. Although the Count in the *Monſtraverunt* be joint. 19 *Ed.* 3. *Monſtraverunt* 5.

19 Ed. 3. pl. 5. 1 H. 5. 13. abate the Writ. And if the Frank-tenants, and the Tenants by baſe Tenure join in a *Monſtraverunt*, the Writ ſhall not abate, but for the Tenants by baſe Tenure only. F

Writ de Warrantia Diei.

[17.] WRIT of *Warrantia Diei* lieth in Caſe where a Man hath Day in any Action brought againſt him to appear in proper Perſon, and the King at or before the Day ſend him in or about his Service, ſo as he cannot appear in Court at the Day; then may he ſue forth this Writ directed to the Juſtices, reciting the whole Matter, commanding them that they do not record his Default for that Day, for the Cauſe before-mentioned: And it is not material, whether the Cauſe be true or not, when the King doth certify that the Party is in his Service. For it ſeemeth by the Words of the Writ, that the King by his Prerogative may warrant this Default for a Day. And ſo it ſeemeth, that if the Tenant in a *Præcipe quod reddat* at the *Grand Cape*, or the *Petit Cape* returned, make Default, that before Judgment upon this Default the King may ſend ſuch a Writ unto the Juſtices, rehearſing that the Party is in his Service, and commanding them that his Default do not prejudice him: *And it ſtandeth with Reaſon that the King may ſo do, becauſe that every one is bound to ſerve the King in his Buſineſs.* But what Proceſs ſhall the Court award, if the Tenant will not appear at the Day of the Default recorded, nor after, when the Writ of *Warrantia Diei* comes unto the *Juſtices?* It ſeemeth a new Summons ſhall iſſue out of the Common Pleas to ſummon the Tenant anew, becauſe that his Default at his Return is excuſed by the Writ of *Warrantia Diei*. But if the Writ *Warrantia Diei* do not excuſe the Default at the *Grand Cape*, then it ſeems a new *Grand Cape* ſhall go forth upon the firſt Default returned at the Summons of the *Præcipe quod reddat*. *Quære* of that. And the King may grant ſuch Writs to ſave two Defaults at two ſeveral Days, *&c.* *Quære* of theſe Matters, becauſe they are out of Uſe at this Day. But the Form of the Writ is ſuch: A B C

The King to his Juſtices of the Bench, greeting: Know ye, that A. *was in our Service by our Command on* Monday *the Morrow of fifteen Days of* Eaſter *laſt paſt; ſo that on that Day he could not be preſent at the Plea which is before you by our Writ, between* B. *Demandant, and the aforeſaid* A. *Tenant, of one Meſſuage with the Appurtenances in* N. *whereupon the ſame* A. *as he ſaith, hath vouched* C. *to Warranty thereof againſt the aforeſaid* B. *And therefore we command you, that the aforeſaid* A. *be not put in Default for his Abſence on that Day, nor loſe in any Thing, becauſe, as to this Matter, we will warrant to him that Day. Witneſs*, &c. D

The Form of a Writ to ſue two Defaults is: *The King*, &c. (as above): *Know ye, that* A. *was in our Service by our Command on* Thurſday *in eight Days of Saint* Hilary, *and on Monday in the Morrow of* All Souls *laſt paſt; ſo that on thoſe Days he could not be preſent at the Plea which is before us by our Writ, between*, &c. *And therefore we command you, that the aforeſaid* A. *be not put in Default for his Abſence on thoſe Days, becauſe, as to this Matter, we will warrant to him thoſe Days. Witneſs*, &c.

And

E And theſe two Writs are not granted but by the King himſelf by the Rule of the Regiſter; and the King may grant ſuch Writs unto the Mayor and Sheriffs of *London*, or unto the Biſhop of *Durham* in the County Palatine, or unto the Juſtices of Aſſiſe or in the Eyre, or unto the Sheriff: And theſe Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writ is ſuch:

F *The King*, &c. *Know ye, that* A. *was in our Service on* Monday *in the Morrow of fifteen Days of* Eaſter *laſt paſt*; *ſo that*, &c. *between him*, A. *Demandant, and* B. *Tenant*, &c. And there it ſhall be ſaid, *in the Morrow of fifteen Days of* Eaſter, becauſe that the Pleas (*a*) cannot be holden *in fifteen Days of* Eaſter, becauſe that is *Sunday*, which is the Sabbath-day. And the King may grant this Writ by Teſtimony of his Steward, thus: Dyer 154. Ante 15. P.

The King, &c. *Becauſe* A. *was before our Steward and Marſhal on* Monday *in fifteen Days of Saint* John the Baptiſt *laſt paſt, in divers Inquiſitions which were ſummoned before the ſame Steward and Marſhal on the aforeſaid Day at* E. *as our ſame Steward hath teſtified before us: We command you, that you do not amerce the aforeſaid* A. *for that, becauſe he came not before you in other Inquiſitions which were ſummoned before you on the ſame Day, nor ſuffer him to loſe Iſſues, if he hath been liable to loſe any before you, upon that Occaſion. Witneſs*, &c.

G And it ſeems by this Writ, that the Juſtices ought to make a ſpecial Entry thereof, and to ſave the Iſſue of this Juror, and alſo to make a ſpecial Eſtreat of this Matter, and to levy no Iſſues upon theſe Jurors, for whom ſuch Writs come unto the Juſtices.

H And if a Man be eſſoined of the King's Service in any Action, *&c.* whereas in Truth he is not in the King's Service, then the Plaintiff or Demandant may ſue forth a ſpecial Writ out of the Chancery directed unto the Juſtices, rehearſing that he is not in the King's Service, commanding them to proceed. But by the Statute of *Glouceſter*, if he do not bring his Warrant at the Day given, he ſhall loſe twenty Shillings for the Journey; and ſhall be in the King's Mercy, and the Eſſoin diſſolved. And if the Plaintiff purchaſe ſuch Writ directed to the Juſtices, that he is not in the King's Service, then the Eſſoin ſhall not be adjourned, but ſhall be preſently quaſhed, and he ſhall not have Day by Adjournment to bring in his Warrant to warrant the Eſſoin.

(*a*) See the Caſe of *Huggard* and *Knevett*, 5 *Mar. Dyer* 154. *&* *ante* 15. P.

* *Writ of Falſe Judgment.*

[18.] 22 Aſſ. 64. Br. Error 120. If the Freeholders be recorded by Plea, where it ought to be by Writ, it is Error, and not void, *& coram non Judice:* But where Judgment is given of Lands, Contract or Covenant, which is out of their Juriſdiction, it is void, *& coram non Judice.*

WRIT of Falſe Judgment lieth where Falſe Judgment is given in the County, or in the Hundred, or in other Court Baron which is not a Court of Record, in a Plea Real or Perſonal, as if in a Writ of Right Patent, or in other Perſonal Plea; there the Party, Plaintiff or Defendant, which is grieved, ſhall have this Writ, and the Writ ſhall iſſue firſt out of the Chancery: And if the Falſe Judgment be given in the Sheriff's County Court, then the Writ ſhall be directed unto the Sheriff himſelf, and ſhall be ſuch: A

V. 4 & 5 Ma. Dyer 164. The Writ was challenged becauſe it was *under your Seal and the Seals of four lawful Men of the ſame Court*, and good, *as it ſeems*. Vide Dyer 373. & infra D.

B Henry, *&c. to the Sheriff of* Lincolnſhire, *greeting: If* A. *ſhall make you ſecure*, &c. *then in your full County cauſe to be recorded the Plaint which is in the* (*a*) *ſame County by our Writ of Right, between* A. *Demandant, and* B. *Tenant, of one Meſſuage and one hundred Acres of Land with the Appurtenances in* C. *whereof the ſame* A. *complains that Falſe Judgment hath been done to him in the ſame County*; *and have you that Record before our Juſtices at* Weſtminſter *ſuch a Day under your Seal, and by four lawful Knights of the ſame County of thoſe who were preſent at that Record: And ſummon by good Summoners the aforeſaid* B. *that he be then there to hear that Record. And have you there the Summoners, the Names of the four Knights, and this Writ.*

15 Ed. 3. 9.

C And if the Tenant hath aliened the Land after Judgment given againſt the Demandant, then the Summons ſhall be made in the Writ againſt him who is Tenant of the Land, and againſt him who was Tenant at the Time of the Judgment given, by theſe Words, *viz. And ſummon by good Summoners the aforeſaid* B. *and* C. *who now hold that Meſſuage and Land, that they be then there to hear*, &c.

D And if the Falſe Judgment be given in another Court Baron than in the Sheriff's Court, then the Writ of Falſe Judgment is called a Writ of *Accedas ad Curiam*, and ſhall be directed unto the Sheriff; and the Writ is ſuch:

The King to the Sheriff of Lincolnſhire, *greeting: If* A. *ſhall make you ſecure to proſecute his Claim, then having taken with you four diſcreet and lawful Knights of your County, go in your own Perſon to the Court Baron of* C. *and in that full*

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* *Note*; In a Writ of Falſe Judgment, if the Judgment be reverſed, the Suitors are amerced, and the Court ſhall give the former Judgment which the Suitors ought to have given, 22 *Ed.* 3. 2. And *Note;* the Amerciament was affeered by the Juſtices, 9 *Eliz Dyer* 263. See *Paſc.* 10 *Ed.* 3. *Rot.* 3. whereby it appears, if the Plea be diſcontinued, and afterwards the Plaintiff is Nonſuit, and Judgment final given againſt him on a Writ of Falſe Judgment, he ſhall be reſtored to the Right only. See *Dyer* 373.

(*a*) *Note*; The Words *ſame County* ought to be *ſame Court*, &c. *Quære.* See *Dyer* 268.

Court cauſe to be recorded the Plaint which was in the ſame Court by our Writ of Right, between A. *Demandant, and* B. *Tenant, of one Meſſuage,* &c. *whereof* A. *complains that Falſe Judgment hath been done to him in the ſame Court; and have that Record,* &c. *under your Seal, and* (*a*) *by four lawful Men of the ſame* V. ſupra B *Court of thoſe who were preſent at that Record: And ſummon,* &c. *and have you there the Names of the aforeſaid four Men, and this Writ.*

E And in this Writ of *Accedas ad Curiam* he ſhall take with him four Men, but it needeth not that they be Knights: But ſo ſhall it not be in the other Writ of *Recordari facias Loquelam,* which is in the County. But both Writs ſhall be returned under the Sheriff's Seal, and the Seals of four of the Suitors of the ſame Court. And in the Writ of Falſe Judgment which is *Accedas ad Curiam,* it is a (*b*) good Return for the Sheriff for to ſay, that after the Receipt of the Writ, and before the Return thereof, no Court was holden; and alſo that he required the Lord to hold his Court, and he would not, ſo as he could not execute the ſame. And thereupon the Juſtices ſhall award a *Diſtringas* directed unto the Sheriff, to diſtrain the Lord to hold his Court; and *Sicut Alias,* &c.

F (*c*) In a Falſe Judgment againſt an Abbot the Plaintiff was Nonſuit, and the Abbot had a *Scire facias* againſt the Plaintiff, to ſhew why he ſhould not have Execution, and to have the Judgment executed returnable at 15 *Paſch.* at which Day the Plaintiff appeared, and aſſigned his Errors, and tendered Sureties to ſue with Effect, and prayed a *Scire facias* againſt the Abbot to hear Errors. And the Opinion of the Court was, that he might aſſign the Errors againſt the Abbot without ſuing any *Scire facias* againſt him, becauſe they had Day by the Roll.

G (*d*) If the Writ of Falſe Judgment abate for Default in the Writ, then the Plaintiff ſhall not have a *Scire facias ad audiend' Errores* upon the Record certified,

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(*a*) *Note*; It is *by four lawful,* &c and not *under the Seals of four lawful Men.* Dyer 164. and ſee *ibid* 373.

(*b*) *Note*; If the Sheriff return, that the Suitors will not record *le Parol* (or Plea) a *Sicut alias Diſtringas* ſhall iſſue againſt all the Suitors: And if at the Day ſome of the Suitors do appear, and others do not, the Court here ſhall accept the Record by the Hands of thoſe that appear; for perhaps at the *Diſtringas ſicut alias* the others will diſavow the Record; but their Iſſues ſhall be ſaved, and the *Diſtringas ſicut alias* ſhall iſſue as well againſt thoſe that appear as againſt the others. And by *Hill,* if on the firſt Writ the Record had been delivered to four Suitors, and two of them had appeared, and the other two made Default, the Record had been (well) accepted. See 1 *Ed.* 3. 9. 26 *Ed.* 3. 61. 12 *H.* 4. 23. And an *idem Dies* ſhall be given to thoſe that appear, according to 29 *Ed.* 3. 26. * For it may be, that at the other Day thoſe who now appear may make Default. But if the Sheriff returns the Names of thoſe who refuſe, the *Diſtringas* ſhall iſſue only againſt them; and if any of them make Default, the Record ſhall not be received by the Hands of thoſe that appear, but their Iſſues ſhall be ſaved, and a new *Diſtringas* ſhall go both againſt them and thoſe who made Default. 9 *Eliz. Dyer* 262.

(*c*) See 6 *Ed.* 6. *Dyer* 76. *b.* Error on a Judgment in a *Quare impedit,* the Record was removed, but the Party did not aſſign Errors; wherefore he that recovered brought a *Scire facias* to have Execution. It appears the Party warned may come in at the Day to aſſign Errors without a *Scire facias ad audiendum Errores.* 21 *H.* 6. 34. & 20 *H.* 6. 18.

(*d*) If a Record be removed by Writ of Error, though the Writ be abated for Default of Form, yet the Judgment being of Record before the Writ of Error, and the Record being here, the Party ſhall have a new Writ of Error, *quoad* * 12 H. 4. 23. *coram vobis:* But by the Writ of Falſe Judgment, that which was (not) a Record before is to be made

certified, becauſe it cometh without an Original, when the Original abateth.
But if the Plaintiff die, it ſeems that if the Falſe Judgment be given in the
baſe Court upon a Writ of *Droit Patent*, that then this Heir ſhall have a
Scire facias ad audiend' Errores againſt him who recovereth upon that Record
which is removed into the Common Pleas. And if the Plaintiff in the Writ
20 H. 6. 18. of Falſe Judgment be Nonſuit, whether the other Party ſhall ſue Execution
44 H. 6. 48. upon this Record ſo removed againſt the Plaintiff, without ſuing forth a *Scire*
31 H. 6. 51. *facias*; is a Queſtion. But *Hill.* 23 *H.* 6. the Opinion was, that he ſhall have
14 H. 4. 39. Execution without ſuing forth a *Scire facias.*
7 Ed. 4. 23.
34 H. 6. 48. And Tenant at Will according to the Cuſtom of the Manor, which is Te- H
Contrary, if nant by Copy of Court Roll, ſhall not have a Writ of Falſe Judgment upon
the Juſtices be a Judgment given againſt him: But where Falſe Judgment is given upon a
removed in the Writ of *Juſticies* directed unto the Sheriff, the Party grieved ſhall have *Faux*
King's Bench *Judgment*, and not a Writ of Error, although the Judgment be of Debt, or
by a Pone. Treſpaſs, over the Sum of twenty Shillings.

2 H. 4. 4. And a Man ſhall not have a Writ of Falſe Judgment but in the Court
21 Ed. 3. 45. where there are Suitors; for if there be no Suitors, there the Record cannot
45 Ed. 3. 1. be certified by them. And upon Falſe Judgment given in Court before Bai-
acc'. therefore liffs, or others who hold Plea by Preſcription, in every Sum in Debt by Bill
it ſeemeth Er- before them, he ſhall not have a *Faux Judgment*, but a Writ of Error there-
ror lieth in a upon. *Quod vide M.* 4 *Ed.* 4. in Title *Treſpaſs. Poſt.* 19. I.
Court of Pi-
powder.
Vide 13 Ed. 4. 18. 6 Ed. 4. 43. 72. 4. 23.

made a Record; and therefore if the Writ be abated (as in a Writ of Falſe Judgment on a Judgment in Ancient Demeſne, was in *Cur' Regis* where it ſhould be *Reginæ)* there is not any Record made or removed, but only an *Eſcrow*, and is as if the Suitors had brought in the Record without a Writ to warrant it; and therefore the Plaintiff in that Caſe, after ſuch Writ abated, ſhall not have a *Scire facias* to warn the Party *ad audiendum Errores, &c.* But it ſeems the Plaintiff ſhall have a new Writ of Falſe Judgment, becauſe the Record is not removed: *Quære*; for it was denied by *Rolph.* 3 *H.* 6. 26. But where a Writ of Falſe Judgment abates by Death of the Party, there, for that the Record was well made and removed, a *Scire facias* lies. *Dyer* 164. 15 *H.* 6. F. *Falſe Judgment* 17, and ſo note the Diverſity. In a *Recordari* out of Ancient Demeſne, the Parol ſhall be remanded, if the Plaintiff is Nonſuit. 2 *Ed.* 3. 29. 10 *Ed.* 3. 59. And ſo if the Cauſe aſſigned be not ſufficient or not true. 34 *H.* 6 35. See here 13. B. C. But on a Writ of Error or Falſe Judgment, if the Plaintiff be Nonſuit, Judgment ſhall not be affirmed or diſaffirmed, but a *Scire facias* ſhall iſſue to have Execution upon the Record, 20 *H.* 6. 18. and ſee there, if the Plaintiff be Nonſuit, he ſhall not aſſign Errors on the ſame Writ of Falſe Judgment, but (as it ſeems) is put to a new Writ. Yet *quære*; for the Record is here, and not in the inferior Court. See 21 *H.* 6. 34. in the Caſe of the Abbot of *Taveſtock.* If the Plaintiff in a Writ of Falſe Judgment be nonſuited, and the Defendant ſues a *Scire facias* to have Execution, *&c.* (1.) The Plaintiff may have a new Writ of Falſe Judgment, *&c. quod coram vobis reſidet.* (2.) On the *Scire facias* to have Execution, he may aſſign his Errors without any new *Scire facias*; becauſe both Parties have Day in Court. (3.) It ſeems, that if the Plaintiff had appeared on the Writ of Falſe Judgment before, now his aſſigning of Errors ſhall not delay the Defendant of his Execution. In Error, if the Plaintiff be nonſuited before *Scire facias*, whereupon the other ſues a *Scire facias quare Executionem non, &c.* he may aſſign Errors on the ſame *Scire facias.* But if he had ſued a *Scire facias ad audiend' Errores*, and afterwards became Nonſuit, there, on the *Scire facias* by the other, he ſhall have Execution, and ſhall not be driven to anſwer to the Errors. *Quære*, and ſee the Book at large; for the Caſe ſeems to be miſ-put.

In

I In Falſe Judgment upon a Writ of Right Patent, or a Writ of *Droit Cloſe*, the Plaintiff ſhall not aſſign Errors before the Records certified, as well (*a*) the Original as the Reſidue of the Record. And the Writ of Falſe Judgment lieth againſt a Stranger to the Judgment, if he be Tenant of the Land, without naming him who was Tenant, and Party to the Judgment. Otherwiſe it is of a Writ of Error, for there he ought to name him who was Party to the Judgment, be he Tenant or not (*b*).

20 Ed. 3. pl. 11. 31 Ed. 3. pl. 10. 38 Ed. 3. 34. 25 Ed. 3. pl. 9.

[19.]

A And where the Tenant loſeth his Land by Falſe Judgment in a Writ of Right in a Court Baron, he ſhall not have a Writ of Falſe Judgment before that the Demandant hath entered upon him, *&c.* *Quod vide M.* 38 *Ed.* 3. 15. *Vide* 8 *Ed.* 4. 19.

21 H. 4. 23. contr', and 21 H. 6. 34. the Party had a Scire facias to have Execution out of the Common Pleas.

B And where the Defendant in *Faux Judgment*, after Appearance by him, maketh Default, a Grand Diſtreſs ſhall iſſue out againſt him. And if he again make Default, or cometh and will not ſave his Default, the Plaintiff in the Writ of Falſe Judgment ſhall have Judgment to recover Seiſin of the Land againſt him: *Quod vide M.* 13 *Ed.* 2. And the Writ of Falſe Judgment given in Ancient Demeſne is ſuch:

C *The King to the Sheriff, greeting: If* A. *ſhall make you ſecure*, &c. *go to the Court* B. *&c. and cauſe to be recorded the Plaint, which is in the ſame Court by our little Writ of Right, between* A. *Demandant*, &c. *And have there the Names of the aforeſaid four Men, this Writ and the other Writ*, &c.

D And in a Writ of *Droit Cloſe*, if the Writ of the (*c*) Demandant be abated, whereupon he bringeth his Writ of Falſe Judgment in the Common Pleas, and there the Judgment is reverſed, and the Writ awarded good; then he ſhall hold Plea in the Common Pleas, and a Judicial Writ ſhall iſſue from the Common Pleas, in Nature of Proteſtation made in the firſt Writ; and if the Proteſtation were in the Nature of Aſſiſe of *Mortdaunceſter*, the Juſtices ſhall direct a Writ unto the Sheriff to ſummon the Jurors to come out of Ancient Demeſne thither, and all the Matter ſhall be tried and determined in the Common Pleas: And although the Judgment be given of the Land in the Common Pleas, yet the Land ſhall be Ancient Demeſne. *Quod vide M.* 3 *Ed.* 3. in Title of *Faux Judgment.* 4 *Inſt.* 270.

In Hill. 6 W. 3. B. R. int' Philips and Bury, it was held by Holt accordant, and the Opinion of Dyer 373. denied, becauſe not warranted by 34 Aſſ. 40.

(*a*) See 31 *Ed.* 3. F. *Falſe Judgment* 10. If Judgment be given in a Court Baron without an *Original*, and the Tenant is ouſted, it is a Diſſeiſin. See 19 *Ed.* 2. *Falſe Judgment* 19. accordant. *Note*; A Copyholder ſhall be relieved by Petition to the Lord. *Mich.* 8, 9 *Eliz. Rot.* 136. *vide ante.*

(*b*) Or his Heir, *&c.* *Quære* if he dies without Heir. 9 *H.* 6. 46 and 49. But if another than the Heir be Tenant, it is the ſafer Courſe to have a *Scire facias* againſt him, eſpecially before that the Court proceeds to the Examination of the Errors. So *quacunque via*, there ought to be a *Scire facias* againſt him, either before the Errors examined or after, for otherwiſe if he be ouſted, he ſhall have an Aſſiſe. *Dyer* 321.

(*c*) And ſo it ſeems, whether the Judgment be affirmed or diſaffirmed, Execution ſhall be awarded in the King's Court. 39 *H.* 6. 5. *a.* And ſo on a Nonſuit, where a Writ of Falſe Judgment is brought before Execution ſued. 12 *H.* 4. 23. *pl.* 5. Yet ſee *Dyer* 373. If the Demandant brings a Falſe Judgment, and it be reverſed, he ſhall only be reſtored to his Action.

Note, That of a Judgment given in Ancient Demeſne of Lands at Common Law, a Writ of Falſe Judgment does not lie, becauſe it is *coram non Judice.* 7 *H.* 4. 28. *b.*

E And upon the Writ of *Faux Judgment*, which is an *Accedas ad Curiam*, if the Sheriff return that the Writ *came ſo late, that he could not execute the ſame*; then he ſhall have a *Sicut alias* directed unto the ſame Sheriff: And if he return not that at the Day, then he ſhall have a *Pluries* to the ſame Sheriff. And he may have theſe Writs of *Alias* and *Pluries* out of the Common Pleas, where the firſt Writ was returned *tarde*, if he will, or he may have them out of the Chancery, &c. See for this Matter in the Book of * *Entries*, *fol.* 114 and 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the ſaid Court, &c. and there pray the Lord to hold his Court, that he may do Execution of the Writ, and that the Lord refuſeth to hold his Court, &c. by reaſon whereof he cannot do Execution of the Writ; then a *Diſtringas* ſhall iſſue out of the Common Pleas directed to the Sheriff, to diſtrain the Lord, ſo that he diſtrain him to hold his Court at a certain Day appointed by the Sheriff; *And that the Sheriff having taken with him four diſcreet Knights*, &c. *of the County*, &c. *he go to the Court*, &c. *and that he make known here in fifteen Days of* Eaſter, &c. *and that he then have that Record*, &c. *and that he ſummon the aforeſaid* I. *that he be there to hear that Record*, &c. Which ſee in the Book of *Entries*, *fol.* 117, 137. *b.*

* See 29 H. 6. Fitz. Return de Viſcount 21. 6 H. 7. 15, 16.

F There is another Writ of *Faux Judgment*; when there is a Plaint in the County of Debt or Treſpaſs without any Writ, then the Writ of *Faux Judgment* in the County ſhall be thus: *Cauſe to be recorded the Plaint which was in the ſame Court without our Writ, between*, &c. *of a certain Treſpaſs*, &c. *whereof the ſame* A. *complains that Falſe Judgment hath been done unto him*, &c. And where *Faux Judgment* is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ ſhall be thus:

The King to the Sheriff, greeting: If A. *ſhall make you ſecure*, &c. *then go to the Hundred of* A. *of* B. *or to the Court of* A. *of* B. *and in the full Hundred or Court cauſe to be recorded the Plaint which is in the ſame Hundred or Court by our Writ, or without our Writ, of that that the ſame* A. *keep with the aforeſaid* B. *the Covenant made between them, of one Meſſuage with the Appurtenances in* F. *whereof he complains*, &c.

G And if a Baron and Feme be ſued in a Court Baron by a Writ of Right, and the Feme is received for the Default of the Huſband, and plead there, and Falſe Judgment is given againſt him, ſhe and the Huſband may have a Writ of Falſe Judgment, as appeareth by the Regiſter.

And there is another Writ there, where the Huſband and Wife pray to be received in a Court Baron in a Writ of Right upon the Default of Tenant for Term of Life, and were not received; and for Falſe Judgment given againſt the Tenant for Term of Life they ſhall have a Writ of Falſe Judgment, &c.

There is another Writ of *Faux Judgment* in the Regiſter for him in the Reverſion, who prayeth to be received in a Court Baron in a Writ of Right upon the Default of two Tenants for Life, where he was received for the Reverſion of one of the Tenants, and the Receipt was counterpleaded for the Reverſion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain Parcel of the Land, and the other Tenant was Tenant of the other Parcel of the Land.

I There is another Writ of *Faux Judgment* for him that hath Judgment given againſt him in the Court of a Lord, who hath Power to hold Pleas before his Bailiffs by the King's Charter: But it ſeemeth, that in that Caſe he ſhall have a Writ of *Error*, and not a Writ of *Faux Judgment*. Ante 18 H. 32 Ed. 3. pl. 8.

K There is another Writ of *Faux Judgment* directed unto the Sheriff, *viz. Accedas ad Curiam: To our Court of* Winchester, *and in that full Court cauſe to be recorded the Plaint which was in the ſame Court without our Writ according to the Cuſtom of the aforeſaid City, between* W. *Demandant, and* D. *Tenant, of one Meſſuage in* Wincheſter *aforeſaid, whereof the ſame* W. *&c. complains that*
I *Falſe Judgment hath been done unto him.* But upon Aſſiſe of *Freſh Force* a Writ of Falſe Judgment doth not lie, but a Writ of Error. And if the Writ [20.] of Falſe Judgment be returned before the Juſtices of the Common Pleas, and 1 Ed. 3. c. 5. the Defendant comes and ſaith and averreth, that the Record is otherwiſe than it is certified, the Averment ſhall be received, and that Iſſue ſhall be tried by 34 H. 6. 42. the Country, or by thoſe who were preſent in Court when the Record was made, and by others of the Country; and if they come not, then the Inqueſt ſhall be by the Country, as appeareth by the Statute *de Anno* 1 *Ed.* 3. *cap.* 5. *Raſtal, Faux Judgment* 2.

Writ de Executione Judicii.

A WRIT *de Executione Judicii* lieth where Judgment is given in the Court of any Lord upon a *Writ of Right Patent*, or upon a Plea of Debt or Treſpaſs in the ſame Court or in the Hundred, County, Court Baron, or in any other Court of Record; and if the Sheriff or the Bailiff will not do Execution of the Judgment, then the Party ſhall have this Writ directed unto the Sheriff or the Bailiff in which Court the Execution ought to be; and if they will not do Execution, he ſhall have an *Alias* and a *Pluries*, with this Clauſe in the Writ of *Pluries*, *Or ſignify to us the Cauſe why*, &c. And if they do not Execution upon this Writ, or return not ſome reaſonable Cauſe wherefore they delay the Execution, the Party ſhall have an Attachment againſt him who ought to have done the Execution returnable into the King's Bench, or into the Common Pleas. And if the Plea be in the Lord's Court Baron, then the Writ of Execution ſhall be directed unto the Bailiff
B of the Court. But if the Plea and the Judgment be given in the Sheriff's Court, as in the County Court, then the Writ ſhall be directed unto the Sheriff himſelf to do Execution, and the *Alias* and *Pluries* ſhall be to the ſame Sheriff; and if they will not do Execution of the Judgment, then an Attachment againſt the Sheriff ſhall be directed unto the Coroners, returnable as aboveſaid, to anſwer, *&c.* And ſo if the Writ *de Executione Judicii* be directed to the Bailiffs of any Court of any Lord, or unto the Bailiffs of a Hundred, to do Execution, and at the *Alias* and *Pluries* they will do nothing, the Attachment ſhall be to the Sheriffs againſt the Bailiffs, returnable

as aforeſaid, to anſwer, *&c.* And if the Judgment be in a Court of Record, then it ſeemeth that the Writ *de Executione Judicii* ſhall be directed unto the Juſtices of the ſame Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The Form of the Writ is:

Henry, *&c.* Lancaſter, *greeting: We command you, that without Delay you cauſe Execution to be done of the Judgment lately given in your County of a Plaint which was in the ſame County by our Writ of Right, between* A. *Demandant, and* B. *Tenant, of one Meſſuage with the Appurtenances in* I. *&c. Witneſs*, &c. (*a*) C

(*b*) *Writ* de Error.

28 H. 6. 11. The Form of Writ of Error to the Juſtices of the Common Pleas is

A Writ of Error properly lieth where Falſe Judgment is given in any Court which is a Court of Record, as in the Common Pleas, or in *London*, or other City, or other Place where they have Power to hold Plea by the King's Charter, or by Preſcription, in any Sum in Debt or Treſpaſs D

Joh. Priſot Capital. Juſt. & ſociis ſuis, & non Capital. Juſt. tantum; for the Records there are not before him alone. But in the Exchequer the Writ is not *Theſaurario & Baronibus*, but *Baronibus tantum.* 34 H. 6. 27. Error was brought the third Day from the Return, where the Judgment was the firſt Day, and well, becauſe after the Judgment. 15 Ed. 4. 18. If a Record be removed out of the Exchequer into the Exchequer Chamber by Error, when Judgment is given, all ſhall be remanded into the Exchequer, and Execution ſhall be awarded there; but that is by the Statute of 31 Ed. 3. c. 12. otherwiſe it is of other Courts.

(*a*) Of Execution, *&c.* in a Court Baron. In Replevin the Defendant pleads, That he recovered on a Plaint in Debt thirty-eight Shillings, affirmed in the Court Baron of *I. S.* and that the ſame Cattle were taken by the Bailiff in the Place where, being the Fee of the ſaid *I. S.* and delivered to the Defendant in Execution, and he was not driven to Gage Deliverance, for he claimed Property, and the Iſſue was, That they were not taken and delivered to him in Execution; *& alii contra* 38 *Ed.* 3. 3.

And a like Caſe was thus: *A.* brought a Writ of Right Cloſe in Ancient Demeſne againſt *B.* of ten Acres, and made Proteſtation in Nature of an Aſſiſe, and recovered; and *C.* being the Bailiff of the Court, took an Ox of *B.*'s on five Acres Parcel of the Land recovered (but in Fact thoſe five Acres were held at Common Law by Virtue of a Fine levied before the Recovery) and ſold the Ox to *D.* and *B.* brought a Replevin againſt *C.* the Bailiff, and it was adjudged, 1. That if the whole had been ſo held by Fine at Common Law, it had been *coram non Judice*, and void. 2. For that Part only was Ancient Demeſne, yet till Judgment reverſed the Damages are leviable. 3. That he might well take the Beaſts by the Execution in any Place within the Manor which is Ancient Demeſne, though the Place where he took them is not Ancient Demeſne. 4. That the Sale was a good Execution, *&c.* 7 *H.* 4. 28. Yet ſee the contrary *per Cur'*, 4 *H.* 6. 17. and 22 *Aſſ.* 72, *per Thorp*, in the Caſe of a Recovery in a Court Baron in Debt. *Ergo quære & vide optime Rot. Parl.* 21 *Ed.* 3. *No.* 21.

(*b*) But not the Writ Original. 24 *Ed.* 3. 24.

over the Sum of forty Shillings. And if Falſe Judgment be given in *London*, or other Place which is a Court of Record, the Party grieved ſhall have a Writ of Error, and this Writ may be returned into the Common Pleas, or in the King's Bench, at the Pleaſure of him who ſueth the ſame.

E And when the Record is removed by Writ of Error into the Common Pleas or King's Bench, then the Plaintiff ought to aſſign his Error, before he have a *Scire facias* againſt the Defendant *ad audiendum Errores*. And if he aſſign divers Things for Errors, which the Court thinketh to be no Errors, he ſhall not have a *Scire facias* upon this Aſſignment. But after Errors aſſigned, and a *Scire facias* awarded againſt the Defendant upon that Aſſignment, he ſhall not *aſſign an Error* in Fact, as to ſay, that the Plaintiff was dead at the Time of the Judgment, or before the Judgment, &c. But he may aſſign as many Errors as do appear in the Record, and it ſhall not be ſaid a double Aſſignment. But he ſhall aſſign for Error but one Error in Fact, becauſe this Error in Fact ſhall be tried by the County, and the Errors in the F Record ſhall be tried by the Juſtices.

37 Aſſ. 17. For Aſſignment of many Errors in Law. 38 H. 6. 30. *Note*, That the Party aſſigned Error upon an Iſſue, and the Court ſaw the Original that it was not good, for it was *ex aſſignatione*, where it ought to be *ex diviſione*, and therefore the Court *ex officio* did abate the Writ.

And upon a Writ of Error the Record itſelf (*a*) ſhall be removed, and not the Tranſcript of the Record; for upon a Tranſcript of a Record a Man ſhall not aſſign Errors, if it be not upon a Writ of Error ſued upon Tranſcript of a Fine, there he ſhall aſſign Errors (*b*) upon the Tranſcript of the Note of the Fine; and if the Juſtices do conceive it Error, then they ſhall ſend for the Note of the Fine, and ſhall reverſe the ſame. *Vide poſt.* 72. D.

In

(*a*) *Ibid.* And a *Scire facias* lies on ſuch a Tranſcript; alſo it ſeems, that Judgment ſhall be given before they remand it, to prevent Loſs of the King's Fine. *Lib. Intr.* 296. *m.* 16 *Ed.* 3. See 21 *Ed.* 3. *contr'.* See alſo 22 *Ed.* 3. 6. the Reaſon, *viz.* Becauſe that which is ſent into *B. R.* ſhall not be remanded, and therefore a Writ was ſent to the Treaſurer and Chamberlains *(of the Exchequer)* to ſend the Fine extracted out of the Files on a Judgment reverſed. See 1 *Mar. Dyer* 89. *Varney*'s Caſe; for there is no Chirographer there, if the Fine be affirmed. See 10 *Eliz. Dyer* 274. *pl.* 44.

See a Fine itſelf removed out of *Oxford*, 50 *Aſſ.* 9. The Plaintiff had Judgment, and the Defendant brought Error and removed the Record, the which he let lie, without ſuing a *Scire facias*; the Plaintiff prayed Execution, and had a *Scire facias*, and upon two *Nihils* returned Execution was awarded, and at the Exigent the Defendant comes and prays a *Scire facias*, and had it, for that he was not named, for *Exactus fuit* is upon the *Scire facias* to have Execution, and not on the Writ of Error. 8 *H.* 6. 13.

Note; If two Defendants bring ſeveral Writs of Error, and ſeveral *Scire facias's*, yet they may aſſign and continue the Errors in Common. 11 *Ed.* 4. 92. adjudged. But if there be a Variance between the Record and the Writ, there, although a Tranſcript of the Record be ſent into *B. R.* and a *Mittitur* into the Rolls of *C. B.* yet the Record remains in *C. B.* and there ſhall be Execution granted, as if a Writ of Error be to ſend the Record of a Recovery by *A.* againſt *B.* and the Record of a Recovery by *A.* againſt *C.* is ſent, this is without Warrant, and the Record ſtill remains in *C. B.* 9 *H.* 6. 4. See 24 *Ed.* 3. 24, 43.

Note; Baron and Feme acknowledge a Deed, which is after inrolled; the Baron dies, and the Feme brings Error to reverſe the Deed, for that it was inrolled by her being a Feme Covert, and for that the Court could not examine her without a Writ; and it was admitted to be good. 21 *Ed.* 3. 43.

(*b*) *Of aſſigning and examining Errors.*

In Re-diſſeiſin the Defendant is outlawed and taken, and then brings Error of the principal Judgment and of the Outlawry, and aſſigns Error in the Principal, and it was held, 1. That the Outlawry ſhall not be reverſed, without making the Plaintiff a Party by *Scire facias*, for the Defendant is in Execution for him.

7 *H.*

In a Writ of Error, when the Record cometh in Court, if the Plaintiff all G that Term do not aſſign his Errors; and although that he do aſſign his Errors, if he do not ſue a *Scire facias ad audiendum Errores* againſt the Defendant, returnable the ſame Term, or the next Term; all the Matter is diſcontinued, and the next Term he ought to ſue a new Writ (*a*) of Error out of the Chancery, upon that Record directed to the Juſtices before whom the Record is removed, to proceed upon the Record *quæ coram vobis reſidet*. 2 H. 7. 12.

The

7 *H*. 4. 40. 2. That he might well have a Writ of Error to reverſe both the principal Judgment and the Outlawry. 11 *H*. 4. 66. and may aſſign Error in the Principal, before he reſorts to the Outlawry; for by reverſing the Principal he reverſes the Outlawry. 11 *H*. 4. 6. 8 *H*. 7. 10. 7 *H*. 6. 44. *contra* 7 *H*. 4. 40. 3. He may ſue to reverſe the Outlawry without finding Sureties for the Damages here. For by defeating the Outlawry the Impriſonment is gone. 7 *H*. 4. 40. 4. If the Party pleads a Releaſe of the Right to the Land, he ſhall be diſabled to reverſe the Principal, and yet he may aſſign Error in the Principal, as in the Original, or in the Judgment, and thereby reverſe the Outlawry, although there be no Error in that Proceſs. 11 *H*. 4. 6. adjudged.

See 18 *H*. 6. 18. The Defendant in an Aſſize was taken by a *Capias pro Fine*, and ſued a Writ of Error, and found Sureties to ſue with Effect, and to pay the Fine to the King, and to ſatisfy the Party, if Judgment was affirmed, and all this was in Chancery; and thereupon he had a Writ to the Juſtices to deliver him, and to ſend the Record into *B. R.* and it was ſo done, and there he aſſigned Errors which were no Errors, whereby no *Scire facias* iſſued, and it was moved that a new *Capias pro Fine* ſhould iſſue, for that the Party had Intereſt in the Execution, ſo that on the ſaid Sureties found in Chancery, he ought not to be diſmiſſed, and therefore the Diſmiſſion was erroneous, for he ought to have had a *Habeas Corpus*, and removed his Body, and thereon to have found Sureties to ſatisfy the Party, or to render his Body to Priſon again, if Judgment were affirmed.

(*a*) *Note*; If Matter of Fact be aſſigned for Error, as that the Party's Attorny was Judge, *&c.* if the other pleads *in nullo eſt erratum*, and confeſſes the Matter of Fact, and puts it in Judgment of the Court. *Si Error, &c.* as 3 *Ed*. 6. *Dyer* 65. He may demur thereto, and ſee *Dyer* 104. a Demurrer on the Errors aſſigned. And *Note*; The Defendant may aſſign for Error, that his Attorny had no Warrant, although he acted for his Advantage. 7 *H*. 4. 16. 11 *H*. 4. 44. *&* 88.

(*a*) See Error on a Judgment in Chancery on a *Scire facias*, upon a Recognizance there, and reverſed in *B. R.* 14 *Eliz. Dyer* 315. And ſee Error in Chancery on a Judgment given in Chancery. 42 *Aſſ*. 22.

Note; In Darrein Preſentment the Parties demur, and adjudged againſt the Defendant, for that he had brought a Writ of Error before the Damages were taxed; for the Aſſiſe in ſuch Caſe is to inquire into the Point of Damages, and yet it was adjudged, that a Writ of Error lies, for that Judgment is rendered upon the Principal, (*i. e.* the Right of Preſentation.)

So where Damages are to be taxed in a Writ of Ayel. 17 *Ed*. 3. 5, 21. 23 *Aſſ*. 8.

Note; Such Court as may hold Plea above forty Shillings, is a Court of Record, and yet may be by Preſcription. 9 *H*. 7. 11. 45 *Ed*. 3. 2. *a*. 18 *H*. 6. *Preſcription* 45. *per Cur'*, 19 *H*. 6. 79, 80. Where one preſcribes to hold Plea by Plaint in his Court of all Debts. 4 *Ed*. 3. 36. He that has Conuſance of Pleas, has a Court of Record. 9 *H*. 6. 58, 59.

Note; If the Plaintiff be Nonſuit, *&c.* the Court ought not to examine the Errors. 21 *Ed*. 4. 44. But if the Defendant pleads in Bar of Error, *&c.* as by Releaſe, *&c.* yet if it be found againſt the Defendant, they ſhall examine the Errors. 21 *Ed*. 3. 54. *b* 8 *Ed* 4. 8. And if it be found for him, the Judgment ſhall not be affirmed or reverſed, but the Plaintiff ſhall be barred. 9 *H*. 6. 48, 49. *a*.

Note; An Infant brought Error of a Fine levied by him to *A*. for Life, Remainder to *B*. he cannot reverſe it without warning *B*. 21 *Ed*. 3. 56. *a*. Alſo, where *A*. recovered againſt *B*. and enfeoffed *C*. and died, *B*. brought Error, and it was held, 1*ſt*, That the Judgment ſhall not be reverſed without making the Heir of *A*. a Party by Garniſhment, either as to the Land

or

The Form to aſſign Errors is to put a Bill into the Court, and to ſay in the Bill, *in hoc erratum eſt*, *&c.* and to ſhew in certain in what Things; and *in hoc erratum eſt*, and ſhew in certain another Thing; and ſo of the reſt in which he will aſſign the Errors. But to ſay, *in omnibus erratum eſt*, is not good, becauſe of the Incertainty.

35 H. 6. 12. If the Writ of Error hath longer Day of Return than it ought to have, the Juſtices of the Common Pleas may ſhorten the Day.

A And in a Writ of Error he ought to aſſign his Error in proper Perſon, and not by Attorny, where he is in Execution by Force of the Judgment.

B And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot aſſign for Error, that the Juſtices of the Common Pleas did not give that Judgment, but the Clerks of their own Heads; neither can he aſſign for Error, that the Jurors gave their Verdict for the Defendant, and that the Juſtices entered it for the Plaintiff, and gave Judgment for him, becauſe that this Aſſignment is contrary to that which the Court doth as Judges, *&c.*

5 H. 7. 3. 8 H. 7. 10. 7 H. 7. 4. 21 H. 6. 43. [21.]

C And if a Man be vouched, and entereth into Warranty, and loſeth, he may have a Writ of Error, and aſſign the (*a*) Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And ſo he in the Reverſion who prayeth to be received upon the Default of the Tenant for Life, or for his faint Pleading, if he be received, and pleadeth, and loſeth, he ſhall have a Writ of Error, and aſſign the Error betwixt the Demandant and (*b*) the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for Life loſeth by Default, he in the Reverſion ſhall have a Writ of Error, although he were not received, nor prayed to be received, and ſhall aſſign for Error the Matter which was betwixt the Demandant and the Tenant who loſt by Default. 8 *H.* 4. 55, 56.

3 Co. 40. 50 Ed. 3. Aſſ. The Reverſion was granted to one pendant the Writ againſt the Leſſee for Life; or if the Tenant in Fee pray in Aid of a Stranger, *quære*; for in theſe Caſes he in the Reverſion ſhall have Error. 50 Ed. 3. 5. But *quære*, if the Judgment ſhall be reverſed, and that Execution ſhall be awarded, or ſhall ceaſe during the Life of the Huſband.

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or the Perſons. 2*dly*, That he might have a *Scire facias* againſt the Heir and Tertenants in the ſame Writ without naming the Tertenants Names; or, 3*dly*, He might have a *Scire facias* againſt the Heir *ad audiend' Errores*, and afterwards a *Scire facias* againſt the Tertenants, to have Execution. 8 *H.* 4. 17, *&c.* Or if he has no Heir, a *Scire facias* lies againſt the Tertenants. See 8 *H.* 6. 35. *b.* *A.* being Guardian of *B.* recovers in a *Quare impedit*, and dies, the Defendant brings Error, and after a *Scire facias* by C. the Heir of *A.* againſt *B.* and the Incumbent, not naming *A.*'s Executor, yet adjudged good: For *A.* was Guardian by reaſon of the Seigniory. See a *Scire facias* againſt a Defendant in the ſame Writ of Error. 34 *Aſſ.* 7 or 17. 8 *H.* 6. 35. *b.*

(*a*) *Note*; He who is only Tenant in Law may have Error, as if the Tenant aliens pending the Writ, and afterwards Judgment is given againſt him. 21 *Ed.* 3. 53, 54. F. *Error* 4. 12 *Aſſ.* 41. He may bring Error, and if he reverſes the Judgment, the Feoffee may enter upon him.

So he in Reverſion or Remainder on an Eſtate Tail may aſſign, *&c.* *Dyer* 188. And thereupon the Tenant ſhall be reſtored. 8 *H.* 4. 5.

See 4 *Eliz.* *Dyer* 241. 21 *H.* 6. 29. 15 *Ed.* 3. 1. *Error* 72. 32 *Ed.* 3. *Error* 73. *Poſt.* 108. A.

(*b*) *Note* alſo; The Vouchee may aſſign Error between the Demandant and Tenant, and ſo of Tenant *per Reſceit.* 8 *H.* 4. 5. 8 *H.* 4. 3. But the Tenant (himſelf) ſhall not have Error, becauſe he is out of Court. *Quære*, 17 *Ed.* 2. *Recovery in Value* 32.

D A Man ſhall aſſign an Error in Law, as the Caſe is: As if the Huſband and Wife levy a Fine of the Lands of the Wife unto a Stranger, the Wife being within Age, they ſhall have a Writ of Error during the Nonage of the Wife, and ſhall aſſign that for Error, and that is an Error in Law of the Court.

20 Aſſ. 2. c. 3. ac. 21 Ed. 3. Fitz Error 4. 7 H. 6. 39. Matter in Fait muſt be pleaded, and ſhall not be aſſigned for Error. 8 Ed. 4. 19. By Pigot and Choke, in Joint Tenancy, General Tenancy, Miſnomer, taking of Huſband pendant the Writ, and the like, which prove the Writ abatable; there if the Party plead other Matter, and admit the Writ, he ſhall not have Error: *Contra* of Death or other Thing, which prove the Writ abated.

E Alſo in a Writ of *Entrie ſur Diſſeiſin*, if the original Writ want theſe Words in the Writ, (*a*) *Which he claims to be his Right and Inheritance*, if the Tenant admit of the Writ, and plead to the Action, and loſeth, he ſhall not aſſign this Fault in the Writ, becauſe he hath admitted the Writ to be good by his Plea. And ſo in a Writ of *Detinue of Charters* concerning (*b*) certain Lands, if the Plaintiff in his Count do not declare the Certainty of the Land in the Count, if the Defendant do admit the Count good, and pleadeth unto the Action, and loſeth by Judgment given in a Writ of Error ſued by him; he ſhall not aſſign for Error the Fault in the Count; becauſe he hath admitted the ſame to be good by his Plea. *Tamen quære.*

8 H. 5. 2. 5 Co. 40. a. 8 Co. 59. a. 40 Ed. 3. 15. V. 21 E. 3. 46. Br. Error 65. and Trial 35.

F (*c*) And a Man ſhall not aſſign for Error a Thing which is for his Advantage: As to ſay and aſſign for Error that he had Day, and that the Day was for longer Time than the common Day; and ſo he ſhall not aſſign for Error that he was not eſſoined, where he ought not to be eſſoined, or had Aid granted unto him, where he ought not to have had Aid; becauſe theſe Things are for his Advantage. *Poſt.* 22. D.

19 H. 6. 12. Falſe Judgment in Wales

G (*d*) If Falſe Judgment be given before the Juſtices of the Biſhop of *Durham* in the County Palatine, the Party grieved ſhall have a Writ of Error there before the ſame Biſhop. *M.* 14 *Ed.* 3. And if he give Falſe Judgment,

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(*a*) See 21 *Ed.* 3. 54. F. *Error* 4. If an Avowry be quaſhable, for that it is returned by the Bailiff of the Franchiſe, where it ſhould be recited by the Sheriff, or if the Writ be abatable and not challenged; this ſhall not be aſſigned for Error; *contra*, if it be abatable *per Officium Curiæ.* 3 *H.* 4. 7.

(*b*) See a Judgment on an Indictment of Conſpiracy, where the Defendant had pleaded Not guilty, reverſed, for that the Place where, and the Day of Conſpiracy, were not ſhewn. 24 *Ed.* 3. 75.

(*c*) An Attorny appears for one without Warrant; it is Error. 7 *H.* 4. 16. At the Grand Cape one appears as Attorny for the Tenant, and wages his Law of Non ſummons, and at the Day makes Default, the Tenant brings Error, and aſſigns that the Attorny had no Warrant; and by the better Opinion Judgment was reverſed For the Continuance was taken without the Party, and the Judgment could not be good on the ſecond Default; for it is but a Judgment by Default, &c. and there ought to have been two Defaults recorded againſt the Tenant. See 8 *H.* 5. 2. 14 *Ed.* 3. *Error* 6. 19 *H.* 6. 12.

(*d*) See the Form of a Reverſal of a Judgment in *Cheſter. Lib. Intr.* 290. *a. b. Reg.* 17. 6 *H.* 4. 9. 34 *H.* 6. 42. *b. Dyer* 320, 321 and 345. *Note*; Error lies not on a Judgment reverſed in the Cinque Ports, but *coram Cuſtode quinque Portuum.* See *Dyer* 376. Alſo a Judgment in *Durham* ſhall not be reverſed in *C. B.* but in *B. R. Paſc.* 29 *El.* 3. *Hughes's Abr.* 207. *Morton*'s Caſe. See 14 *Ed.* 3. F. *Error* 6. and 8 *Eliz. Dyer* 250.

ment, then the Writ of Error ſhall be ſued in the Common Pleas, or in the King's Bench. 22 *Ed.* 3. 3. 23 *Ed.* 3. 22. 2 *R.* 3. 2. 7 *H.* 6. 28.

before Juſtices, Errors there ſhall be reverſed in B. R. if there be Juſtices there; but by Forteſcue it ſhall be reverſed in Parliament. 19 H. 6. 12. Error in County Palatine ſhall be reverſed in B. R. 21 H. 7. 33. *per* Fineux, Erroneous Judgment in County Palatine ſhall be reverſed there by Commiſſion. 37 H. 6. 13. Error in Chancery reverſed in Parliament. But ſee 14 Eliz. Dyer 315. That Error upon a Scire facias upon a Recognizance was reverſed in B. R. which ſeemeth contrary to 37 H. 6. 13.

H And if a Falſe Judgment be given for the King in any Suit or Action, the (*a*) Party grieved ſhall have a Writ of Error, and *aſſign his Errors*, without ſuing forth any *Scire facias* againſt the King *ad audiendum Errores*, becauſe that the King is always preſent in Court; and that is the Cauſe of the Form of Entries of Suits for the King is ſuch: Chriſtopher Hales, *Attorney of the Lord the King*, *who proſecutes for the Lord the King*, &c. *comes here into Court*, &c. and not, *The Lord the King by* C. H. *his Attorney*, *comes here into Court*, becauſe that the King is always preſent in Court.

7 H. 4. 37. 1 H. 7. 13. 2 R. 3. 2. 25 Ed. 4. 7.

1 H. 7. 13. It is ſaid, if any be to reverſe Outlawry in Felony, when he cometh in upon the Indictment, he ſhall aſſign his Error before he proſecuteth his Writ of Error.

I (*b*) Error in the King's Bench in the Proceſs, where it is the Default of the Clerks, ſhall be reverſed in the ſame Court by a Writ of Error ſued by the Party before the ſame Juſtices: But not without ſuing of a Writ of Error, although it be the ſame Term. But in the Common Pleas, after Judgment given the ſame Term the Juſtices may reverſe their own Judgment upon Error in the Proceſs, or for Default of the Clerks, without any Writ of Error ſued forth; but in another Term the Party ought to ſue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law

Vide 4 Ed. 4. 41. 24 Ed. 3. 34. 7 H. 6. 28. Hidebrad's Caſe. 19 H. 6. 2. 15 Ed. 4. 78. 37 H. 6. 17. *per* three Juſtices. If a Man be utlage notwithſtanding a Superſedeas, and appear and plead in the Common Pleas, the Utlary ſhall be reverſed in the ſame Place, although it be in another Term; but *contra*, if it be in another Term, but Defendant doth not appear and plead.

(*a*) *Note*; He ought firſt to ſue by Petition to the King. See where a Writ went to the Juſtices to examine the Errors, *hoc non obſtante.* 24 *Ed.* 3. 35, 36. *Hill.* 29 *Eliz.* 3. *Hughes* 308.

(*b*) See the Form of a Writ of Error in Parliament, *Dyer* 375.

As if before the *quintus Exactus* the Party appears, and has a *Superſedeas* of Record, be it in Term or in the Vacation, though it is not ſhewn to the Sheriff at the Day of the Exigent or *Capias utlagatum*, he may avoid the Outlawry the *ſame Term* in *C. B. contra* in *B. R.* See 4 *H.* 4. 1. *a. b.* 4 *Ed.* 4. 42. 10 *H.* 7. 16. 9 *H.* 6. 12. 44. *a. b.* And if he comes in at the Return of the Exigent, he may reverſe it in *B. R.* without a Writ of Error; *per Weſtbury:* And ſee there if Judgment be given; where there is a Default in awarding the Proceſs, or in the Return, it is ill. For there the *Tales* was returned without being awarded, and on a Writ of Error brought, three Points were agreed, *viz.* 1. That though on an erroneous Judgment given on *an Original* in *B. R.* Error does not lie there, except for Error in Proceſs by Default of the Clerk, or in the Return by Default of the Sheriff: Yet there, *i. e.* in *C. B.* a Writ of Error ſhall be granted for Error, either in the Record, or in the Proceſs, or *in Redditione Judicii.* 2. That in the ſame Term the Roll is not recorded, but is only in the Breaſt or Remembrance of the Judges, and therefore in the ſame Term they may amend by the Common Law, even after Judgment; yea, though a Writ of Error be brought. (See *Tutchin*'s Caſe, 6 *Mod.*)

which is the Default of the Juſtices, the ſame Court cannot reverſe the Judgment by a Writ of Error, nor without a Writ of Error, but this Error ought to be redreſſed in another Court before other Juſtices by a Writ of Error.

K And he which confeſſeth the Demandant's Action ſhall have a Writ of Error to reverſe that Judgment, againſt his Confeſſion upon erroneous Judgment given.

Yet note; 9 H. 7. 24. is that the Heir at the Common Law ſhall have it. 3 H. 4. 19. the Daught. to the Tail brought Error, altho' a Son were Heir at Common Law. Vide 1 Ma. Dyer 89, 90. 20 Ed. 3. Fitz. Error 2. 11 H. 4. 65.

L In Plea of Land againſt the Tenant, and the Tenant dieth, he (*a*) who is
Heir of the Tenant to that Land ſhall have a Writ of Error, and not he who
is his Heir at the Common Law: As in *Borough-Engliſh*, if the Tenant loſe
the Land by erroneous Judgment, the youngeſt Son ſhall have the Writ of
Error. (*b*) And ſo he which is Heir unto the Special Tail ſhall have the M
Writ of Error, if the Land be loſt by erroneous Judgment: The Tenant
may have one Writ of Error, and the Vouchee another Writ of Error upon
the ſame Judgment; and ſo the Tenant, and the Vouchee by Reſceit, and
all depending at one Time. And an Executor or Adminiſtrator ſhall have a N
Writ of Error upon a Judgment given againſt the Teſtator for Debt or Damages. And ſo the Heir ſhall have a Writ of Error to reverſe an (*c*) Outlawry of Felony pronounced againſt his Father, to reſtore the Blood betwixt him and the Father. And if a Man plead in any Action, and the Juſtices will not allow thereof, and the Party makes his Bill upon it, and prayeth, that the Juſtices will ſeal this Bill of his (*d*) Exceptions or Plea; and if they do

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And in *C. B.* where, in the principal Caſe, a *Tales* was in Fact awarded, but not entered on the Roll, it was amended after a Writ of Error brought, it being in the ſame Term. 7 *H.* 6. 28. See 2 *R.* 3. 21. and 8 *H.* 6. 37.

See *Dyer* 195. An Outlawry after Judgment reverſed, becauſe although a *Capias* lay on the Writ, yet the Proceſs for it was not till after the Judgment diſcontinued. And *Note*; If a Plea be diſcontinued, and the Plaintiff be afterwards Nonſuit, yet he ſhall have Error or Falſe Judgment, as his Caſe is. 22 *Ed.* 3. 2. *a.*

(*a*) See accordingly 3 *H.* 4. 19. And that the Writ ſhall be brought generally as Heir, and that on Exception taken thereto, that he is not Heir, he ſhall ſhew the ſpecial Matter. See 9 *H.* 7. 24. *b. contra, viz. A.* and *B.* his Wife, are Tenants in Tail Special, and to their Heirs; they have Iſſue *C. A.* dies, *B.* and *C.* levy a Fine, *C.* dies without Iſſue, *D.* as Heir to *C.* brings Error, *&c.* 1. For that it does not appear that *C.* was Heir to the Wife, *&c.* 2. That he ought to make him Heir to *A.* for he may be only of the Half-Blood to *C.* And ſee *Vernay*'s Caſe in *Dyer* 89. In a Suit brought as Couſin and Heir, he ſhews how he is Heir.

(*b*) See 8 *H.* 4. 3. accordant; and if Judgment be reverſed againſt the one, it ſhall be reverſed againſt both. See 2 *H.* 7. 10. and *ſupra* the Notes *Fol.* 21. C.

(*c*) But he ought to ſue a *Scire facias*, that the Lord may ſeize for the Eſcheat. 8 *H.* 6. 2. *pl.* 9. *ult. Lib. Intr.* 308. *b.*

Note; Error in the principal Judgment ſhall reverſe the Acceſſary, and *è contra*. If a Judgment be of Record againſt a Parſon in Annuity, in a *Scire facias* againſt the Succeſſor, he ſhall not plead in Bar of Execution, that the Judgment was erroneous, and if he does ſo, Execution ſhall be awarded; and if he after brings Error on the Judgment, if on the *Scire facias* he aſſigns Error in the principal Judgment; this is not good, although the whole Record of the Judgment be recited in the *Scire facias*; and therefore if the Judgment be affirmed on the *Scire facias*, yet he may have Error on the Principal, and thereby reverſe the Judgment on the *Scire facias*, and he ſhall be reſtored to all that he loſt on the *Scire facias:* Adjudged 11 *H.* 4. 47. See 9 *H.* 6. 13. accordant.

(*d*) See 11 *H.* 4. 52. *per Hulſ.* the Bill of Exceptions is no Part of the Record, before that it be acknowledged, *(i. e.* entered, *&c.)* And 11 *H.* 4. 65. By good Opinion, one of the Juſtices may deliver the Bill into Court without a *Scire facias*; yet in that Caſe a *Scire facias* do not according as is contained in the Statute of *Weſt.* 2. *cap.* 3. the Party grieved ſhall have a Writ of Error, and may aſſign Error upon that Bill ſo ſealed, and alſo in the Record, or in one of them, at his Pleaſure: But this Bill ought to be ſealed by the Juſtices before Judgment given by them, and not after, as it appeareth *An.* 11 *H.* 4. 52, 65, 92. [22.]

A The Succeſſor of an Abbot, Prior or Parſon, or ſuch Bodies Corporate, ſhall have a Writ of Error of a Judgment given againſt their Predeceſſor; of all Things which touch the Succeſſion or Corporation. But if a Man recover againſt a Parſon or a Biſhop, Debt or Damages by Judgment or Action Perſonal, their Executors ſhall have the Writ of Error upon that Judgment, and not their Succeſſors, becauſe that Matter doth not concern the Corporation.

Vide 3 H. 3. the laſt Caſe. Vide devant 21. L. M. N. 16 Ed. 3. Error 69. 12 H. 8. 8. ante M.

B If a Man ſue forth Execution erroneouſly againſt the Recognizor upon a
Recognizance, the Feoffee of the Recognizor ſhall have a Writ of Error.
(*a*) If a Man purchaſe his Pardon of an Outlawry, yet he may have a Writ
of Error to reverſe the Outlawry. *H.* 18 *Ed.* 3. (*b*) But if a Man do diſ-
C claim in a *Præcipe quod reddat* of Land, and the Demandant doth recover,
the Tenant ſhall not have a Writ of Error againſt his own Diſclaimer: But
if he plead *Non-tenure*, and the ſame be found againſt him, for which the
Demandant recovereth, the Tenant ſhall have a Writ of Error. *H.* 6 *Ed.* 3.
A Man condemned ſhall not aſſign Error in the Proceſs; but in the original
Writ he may.

D It is no Error to ſuffer one to make Attorney in an Action in which he ought not to make any Attorney. 7 *H.* 6. 21.

E (*c*) Upon Falſe Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be ſued there; and returnable in the King's Bench in *Ireland*; but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error ſhall be ſued and returned in the King's Bench in *England*.

18 Ed. 3. 25. 17 Aſſ. 24. Error 71. yet the Lord by Eſcheat ſhall not have Error. 15 Aſſ. 8. and ſo 9 Ed. 4. 14. that a Stranger ſhall not have Error. 6 Ed. 3. 7. Fitz Error 78. 21 H. 7. 13. 5 Ed. 2. Error 89. no Error ſhall be brought here but upon Default of Juſtice of the King's Bench in Ireland. And note that it is ſaid, that there is no Original here, but the ſame remains there; and ſo is 37 Aſſ. 5. Fitz. Aſſ. 328.

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facias iſſued, and the Juſtices came and acknowledged their Seals; and it was held, that this Acknowledgment of the Juſtices might be made long Time after the Writ of Error brought, and after the *Scire facias* awarded, and that no new *Scire facias* ſhall iſſue; for it is now become Parcel of the Record *ab initio*, as in the Caſe of Diminution alledged after a *Scire facias*. The Defendant ſhall not alledge Diminution in the Bill of Exceptions, but ought to have ſhewn his Caſe when the Juſtices came to ſet their Seals. See 1 *H.* 4. 92.

See alſo 11 *H.* 4. 67. and *Note*, 11 *H.* 4. 92. *per Gaſcoign*, and *Hulſ.* it was held clearly, that the Bill may be ſealed after the Record removed by Writ of Error.

(*a*) *Poſt.* 104. G. See 24 *Ed.* 3. 42, 43. accordant. But he ſhall not be reſtored to his Chattels againſt the King; and *Note*, the Error there was a Diſcontinuance of the Proceſs. See 3 *H.* 4. 10. accordant. Yet it cannot be alledged at the *Scire facias*, without the Charter (or Writ) returned, and the Plaintiff has counted. *Vide poſt.* 104. G.

(*b*) See 3 *H.* 4. 20. 19 *Ed.* 3. *Error* 75. 6 *Ed.* 3. 7. 36 *Ed.* 3. *Error* 6 and 82.

(*c*) Of Errors to reverſe Judgment in *Ireland*, ſee *Shower's Parliament Caſes.*

And to reverſe a Judgment of Reverſal given in the King's Bench in *Ireland*, ſee 34 *Aſſ.* 7.

F (*a*) When the Record cometh into Court by a Writ of Error, the Plaintiff ſhall aſſign his Error, and ſhall have a *Scire facias* before the Record ſhall be entered; for the ſame ſhall not be entered before the Parties have Day by the *Scire facias*.

G And the Proceſs in this Writ is *Alias* and *Pluries*, and upon that Attachment ſhall be awarded againſt the Judge, who ought to return the Record to whom the Writ was directed: And the *Pluries* may be returned into the Common Pleas, or into the (*b*) Chancery, if the *Pluries* iſſueth to the Juſtices of the Common Pleas to remove the Record; and if the Writ iſſueth to another baſe Court, the *Pluries* ought to be returned into the Chancery, or into the ſame Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himſelf with his own Hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had ſent a *Mittimus* with the Record (*c*).

Error

(*a*) Here *Note*; If the Record be removed for Error, but the Party does not aſſign his Errors, he who recovers may have a *Scire facias* for Execution; and if he has Execution awarded by Default, yet the other may come and aſſign Errors in the Parliament, and then have a *Scire facias ad audiend' Errores*. 9 *H*. 6. 13. See accordant 17 *Ed*. 3. 21.

Note; A *Scire facias ad audiend' Errores* ſhall iſſue againſt the Tertenant and Heir of him who is Party to the Record; but the Heir is Plaintiff, and by his Death the *Scire facias* ſhall abate. *Note*; The Plaintiff may elect a *Scire facias* againſt the Heir only, and after Reverſal to him take another *Scire facias* againſt the Tertenant *ad audiend' Errores*, or he may take it againſt both together. 47 *Aſſ*. 4.

(*b*) The Chancellor may ſend the Record into *C. B.* 17 *Ed*. 3. 21. 5 *H*. 5. 1. in a *Certiorari*. See 9 *H*. 6. 4. that Part of a Record may be delivered to the Juſtices of *B. R.* by the Chief Juſtice without a Writ, when the other Part was delivered by Writ.

(*c*) What Record ſhall be removed by Writ of Error?

Note; If Judgment be given in a Franchiſe, or inferior Court by Writ of Error, the Original ſhall be removed; but if it be given in *C. B.* the Original ſhall not be removed without a ſpecial Writ (for its Removal). 34 *Aſſ*. 7. Yet ſee an Original not removed in caſe of Error brought on a Judgment in *Oxon*. in a Writ of Right, for that if the Judgment were reverſed, the Party might proceed on the ſame Original in *Oxon*. or he might pray a Writ to remove the Original into *B. R.* and ſo proceed thereon in *B. R.* 37 *Aſſ*. 5. 17. *Fol*. 22. See *Danvers's General Abr*. Tit. *Error*.

Where a Writ of Error ſhall be a *Superſedeas*, &c. If the Party be in Cuſtody on a *Capias ad computandum*, he ſhall not be taken out of it by a Writ of Error. 21 *H*. 6. 26.

Note; 1. If after Judgment Execution be awarded, and Error brought, and then the Party is taken, he is well taken, for a *Superſedeas* ought to have iſſued (upon the Writ of Error) out of *C. B.* directed to the Sheriff; for the Writ of Error is no *Superſedeas* as to the Sheriff, but if the Party removes the Record, he may find Sureties, and have a *Superſedeas* (directed to the Sheriff) out of *B. R.* 20 *H*. 6. 4. 7 *H*. 6. 42, 44.

But *Note*; If no Execution be awarded; 1. The Writ of Error is a *Superſedeas* to the *Award* of Execution; but if the Party be Nonſuit, and brings another Writ of Error, this is no *Superſedeas* to the Award of Execution, nor ſhall any *Superſedeas* be directed to the Sheriff on this ſecond Writ; and yet if he ſends the Record into the King's Bench on this ſecond Writ, he ſhall have a *Superſedeas* there on Sureties found. 20 *H*. 6. 4. 19 *H*. 6. 8. But if the Writ of Error be diſcontinued by the not coming of the Juſtices, &c. the ſecond Writ is ſuperſeded. 6 *H*. 7. 16. But if a Judgment be given in a *Quare impedit*, and the Party ſues out of (or on) the Rolls a *Quare non admiſit*, and pending this the other brings a Writ of Error, the Record ſhall be ſent notwithſtanding this Writ; and when the Record is ſent, the *Quare non admiſit* being a Judicial Writ, and all the Proceedings thereon are determined; for by Reverſal of

the

Error in London.

H NOTE, that if any erroneous Judgment be given in the Courts before the Sheriffs of *London*, the Party grieved ſhall have a Writ of Error out of the Chancery directed unto the Sheriffs, to bring that Record before the Mayor and Aldermen in the (*a*) Huſtings of *London*, which Huſtings is a Court holden before the Mayor, *&c.* And there the Record ſhall be examined: And if there be Error, they ſhall reverſe the Record there by the Cuſtom of the ſaid City. And if the Sheriff, after the Record is removed before the Mayor, *&c.* in the Huſtings, will award Execution upon the Record againſt the Party, the Party againſt whom the Execution is awarded ſhall have a ſpecial Writ out of the Chancery directed unto the Sheriffs, that they take ſufficient Sureties of the Party to ſatisfy the King, and alſo the Party, of that which appertaineth unto them, if the Judgment be affirmed, and that they ſurceaſe to do Execution; and if they have taken the Party in Execution, that they deliver him out of Priſon. And the Form of the Writ is ſuch:

Nat. Brev. 17. Ante 21. A Feme Covert was received in the Common Pleas to acknowledge a Deed inrolled, where they have not Power to examine her without a Writ, *quære* if Error; for it is not adjudged, if it be Error or not. *Quære* the Uſage at this Day. So of an Infant. 21 Ed. 3. 29. Br. Error 62. Vide 32 H. 8. That a Statute nor Deed inrolled ſhall not be taken by the Common Law of an Infant or Feme Covert. *Contra* by the Cuſtom of London, per 29 H. 8. 23. and 7 Ed. 4. 5. Lis.

I *The King to the Mayor and Sheriffs of* London, *greeting: It is ſhewn unto us on the Behalf of* R. *&c. that whereas according to the Cuſtom in the City aforeſaid, in Caſe when any Perſon, either Plaintiff or Defendant, complains that in a Plaint which was in our Court before the Sheriffs of the City aforeſaid, any Errors have intervened, and would remove the Record and Proceſs of thoſe Plaints for Cauſe of Error intervening into the Huſtings of the City aforeſaid, to have thoſe Errors corrected, the Sheriffs of the City ought to ſuperſede the Execution of the former Judgment before them given, pending the Records and Proceſs of thoſe Plaints indiſcuſſed in the Huſtings; and we lately, at the Proſecution of the aforementioned* R. *ſuggeſting, having been informed that manifeſt Error had intervened*

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the firſt Judgment, all that depends thereon is reverſed; and the ſame Law is in a *Scire facias* to reverſe a Judgment. See 26 *Ed.* 3. 75. and 2 *H.* 6. 4. See alſo Stat. 3 *Jac.* 1. *c.* 8.

A *Scire facias* iſſued upon a Fine, the Tenant made Default, and at the Day given a Writ of Error was brought on the Fine; no Judgment ſhall be given on the *Scire facias*, but the Plaintiff may have Debt on a Recovery, although the Record be removed by Error, either pending or before the Writ of Debt brought; for the Writ of Error is as a new Original.

On a *Devaſtavit* on a Judgment in Debt againſt Executors, a *Scire facias* iſſued, and on Iſſue found for the Plaintiff, the Defendant had a Writ of Error on the original Recovery; yet Judgment ſhall be given in the *Scire facias*, that Execution ſhall be awarded, *ſed ceſſet Executio* until the Record affirmed. 10 *H.* 6. 6. *per Cur'.*

Note; This *Scire facias* is in Nature of a new Original, as if one recovers in Aſſiſe, and after brings a Re-diſſeiſin, and afterwards Error is ſued of the Judgment given in the Aſſiſe; yet the Sheriff ſhall go to the Judgment in the Rediſſeiſin, becauſe it is in Nature of a new Original. See 9 *H.* 5. 13.

(*a*) Vide *Rot. Parl.* 8 *Ed.* 2. *m.* 17. the Caſe of *Joh. Bonaventure.*

in the Record and Proceſs of a Plaint which was before you the aforeſaid Sheriffs in our Court of the City aforeſaid by our Writ, between A. *and the aforeſaid* R. *for that, that the ſaid* R. *&c. commanded you, that you ſhould cauſe the Record and Proceſs thereof to come before you in the Huſtings aforeſaid, to correct the Error, if any ſhould be; nevertheleſs you the Sheriffs (pending the ſaid Plaint of Error indiſcuſſed in the Huſtings aforeſaid) unjuſtly cauſe Execution of the former Judgment to be done, to the no ſmall Expence and Grievance of the ſaid* R. *Therefore we command you, that if it ſo be, that the ſame* R. *ſhall find you ſufficient Security as well to ſatisfy to us of that which belongs to us in this Behalf, as to the aforeſaid* A. *of the Arrearages and Damages adjudged to him in this Be-* [23.] *half, if the firſt Judgment ſhall happen to be affirmed, and further to do and receive that which our Court ſhall conſider in this Behalf; then ſuperſede the doing Execution of the former Judgment pending the Plaint of Error above-mentioned in the Huſtings aforeſaid. And if the ſaid* R. *be taken and detained in our Priſon by occaſion of that Judgment, then that you in the mean time cauſe him the ſaid* R. *to be delivered out of the Priſon by the Security aforeſaid, if he be detained in the ſame upon the Occaſion aforeſaid, and upon no other, that he may be able to proſecute his ſaid Plaint of Error. Witneſs*, &c.

And it appeareth by this Writ, that a Man ſhall have an Action againſt A any Perſon in *London*, by Original out of the Chancery directed unto the Sheriffs of *London*, and that they ſhall hold Plea thereof. And a Man ſhall have B the like *Writ of Error* upon a Judgment given in *London* before the Sheriffs by Plaint ſued there before them, without any Writ original ſued, *&c.* And the *Writ of Error* ſhall be directed unto the Mayor, and alſo to the Sheriffs, although that the Judgment be given in the Sheriffs Court before them, to remove the Record into the Huſtings to reverſe it there, if, *&c.* And the Form of the Writ ſhall be thus:

The King to the Mayor and Sheriffs of London, *greeting*, &c. *Becauſe in the* C *Record and Proceſs, and alſo in the giving of Judgment of the Plaint which was in our Court of the City aforeſaid before you the aforeſaid Sheriffs without our Writ according to the Cuſtom of the ſame City, between* A. *and* R. *of a certain Treſpaſs to the ſame* A. *committed by the aforeſaid* R. *as it is ſaid, manifeſt Error hath intervened, to the great Damage of him the ſaid* R. *as we have received from his Complaint: We being willing that the Error be corrected in due Manner (if any ſhall be) and full and ſpeedy Juſtice done to the Party aforeſaid in this Matter, command you, that if Judgment thereof be given, then that you cauſe the Record and Proceſs of the Plaint aforeſaid to come before you in our next Huſtings of the ſame City, and the ſame to be recited and diligently examined in the Preſence of the aforeſaid Parties to be warned hereupon by you the ſaid Sheriffs to be preſent, if they will, and the Error (if any ſhall be) in this Matter to be corrected in due Manner, and full and ſpeedy Juſtice to be done thereupon to the Parties aforeſaid, as of Right and according to the Cuſtom of the City aforeſaid ought to be done. Witneſs*, &c.

And the Writ of *Superſedeas* unto the Sheriff, to ceaſe to do Execution pen- D dent the *Writ of Error*, may be made and contained in the ſame *Writ of Error* which is directed unto the Mayor and Sheriffs to remove the Record into the Huſtings.

E And if erroneous Judgment be given in the Huſtings in *London* before the Mayor and the Sheriffs there, then the Party who will ſue to reverſe the Judgment ſhall come into the Chancery, and there ſue a Commiſſion directed to Perſons to examine the Record, and Proceſs, and the Errors, and thereupon to do Right. And the Commiſſion ſhall be thus:

34 H. 6. 42. When Error is ſued upon a Judgment before the Mayor, it ſhall be at S. *Martin's*, and then the Mayor and Aldermen ſhall have forty Days to be adviſed of their Records, and the Recorder ſhall record the ſame *Ore tenus*.

(*a*) *The King to his beloved*, &c. R. *and* S. *greeting: We have received Information on the Behalf of* B. *that in the Record and Proceſs, and in the giving of Judgment of the Plaint which was before the Mayor and Sheriffs of* London *in our Huſtings there without our Writ, between* C. *and the aforeſaid* B. *of a certain Treſpaſs*, &c. *committed, as it is ſaid, manifeſt Error hath intervened: We, in Defect of the ſame Mayor and Sheriffs, being willing* that *Error be in due Manner corrected (if any ſhall be) and that Fullneſs of Juſtice be done thereupon to the Parties, do aſſign you our Juſtices, together with thoſe whom we have aſſociated with you, to examine the aforeſaid Record and Proceſs, and to correct the Error (if any ſhall happen to be found in them, or in the giving of Judgment of the Plaint aforeſaid) and to do full and ſpeedy Juſtice thereupon to the Parties, according to the Cuſtom of the City aforeſaid; and therefore we command you, that at a certain Day which you ſhall prefix for this Purpoſe, you go to Saint* Martin's le Grand, London, *and that in Defect of the aforeſaid Mayor and Sheriff you do the Things premiſed to be done in Form aforeſaid*, &c. *according to the Law and Cuſtom of our Realm, and of the City aforeſaid; ſaving*, &c. *We command*, &c. *the ſame Mayor and Sheriffs, that at a certain Day whereof you ſhall give them Notice, they cauſe the Record and Proceſs of the Plaint aforeſaid, with all Things touching them, and the Parties aforeſaid, to come before you at the Place aforeſaid. In Teſtimony whereof*, &c. *Witneſs*, &c.

F And upon this Commiſſion the Juſtices ſhall award a Precept unto the Mayor and Sheriffs, to ſend the Record and Proceſs before them at a certain Day, and to warn the Parties to be before the Juſtices at the ſame Day, *&c.* And the King ſhall ſend another Writ unto the Mayor and Sheriffs, to have the Record and Proceſs before the ſaid Juſtices at the Day aſſigned by the Juſtices by their Precept made unto the Mayor and Sheriffs. And upon this Commiſſion the King may make Aſſociation, and another Writ *Si non omnes* directed unto the Juſtices to proceed, although that ſome of them do not come, as he ſhall do in an Aſſiſe, or in *Oyer* and *Terminer*, &c.

G And a Man ſhall have a Commiſſion to examine the Errors, and Judgment given in the Huſtings in the Time of another King, and in the Time of another Mayor and other Sheriffs; and the Form of the Commiſſion is ſuch:

The King to his beloved, &c. *Becauſe we have received Information on the Behalf of* B. *that in the Record and Proceſs*, &c. (as above, until) *do aſſign you, three or two of you, our Juſtices, to ſuperviſe and examine the Record and Proceſs of the Plaint aforeſaid, in the Preſence of the now Mayor and Sheriffs of the City aforeſaid, to be warned hereupon by you to be preſent, if they will, at the*

(*a*) See the *Parliament Roll*, 22 *Ed.* 1. *m.* 9. *Dorſo.*

Church of Saint Martin le Grand, London, *&c.* (as in the Commiſſion next above, until) *and therefore we command you, that at a certain Day which you ſhall prefix for this Purpoſe, you go to the ſaid Church of Saint* Martin le Grand, London, *and do and explain all and ſingular the Things premiſed to be done in Form aforeſaid*, &c. *according to the Law and Cuſtom of the City aforeſaid*; *ſaving*, &c. *We alſo command the ſame now Mayor and Sheriffs, that at a certain Day whereof*, &c. *you ſhall give them Notice, they cauſe the Record and Proceſs* [24.] *of the Plaint aforeſaid, with all Things remaining in their Power touching the ſame, as it is ſaid, to come before you*, &c. *at the Place aforeſaid*; *and we command the aforeſaid Sheriffs, that they give Notice to the aforeſaid* B. *that he may be then there to hear the Error, if any be in the Record and Proceſs aforeſaid*, &c. (as above in the Premiſſes). *Witneſs*, &c.

And upon this Commiſſion the King ſhall ſend another Writ unto the Mayor and Sheriffs of *London*, to ſend the Record and Proceſs before the ſaid Juſtices, *&c.* And the Writ in the Beginning thereof ſhall rehearſe the Effect of the Record and Proceſs, and alſo it ſhall rehearſe the Commiſſion which he hath made to be directed unto certain Juſtices, to examine, *&c.* and to do Juſtice thereupon: And then he ſhall ſay in the End of the Writ, *And therefore we command you, that at a certain Day, of which the ſame* R. F. *and* S. *or two of them, ſhall give you Notice, you cauſe the Record and Proceſs of the Plaint aforeſaid, with all Things touching the ſame which remain in your Power, as it is ſaid, to come before them, or two of them, at the Place aforeſaid*; *and do you the aforeſaid Sheriffs give Notice to the aforeſaid* A. *that he may be then there to hear the Error (if any ſhall happen to intervene in the Record and Proceſs aforeſaid, or in the giving Judgment of the Plaint aforeſaid) and further to do and receive that which our Court ſhall conſider in this Behalf: And have*, &c.

A And if a Man hath Judgment given for him in *London* before the Sheriffs in their Courts, or before the Mayor and Sheriffs in the Huſtings of *London*, and the Defendant, to delay the Execution of the Judgment, ſueth a Writ of Error to remove the Record before the Mayor, *&c.* and after the Party Defendant who ſued that Writ of Error, will by ſubtil Means convey his Goods out of the City, or otherwiſe waſte them, to the Intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover ſhall have a ſpecial Writ directed unto the Mayor and Sheriffs, that they provide that the Goods amounting unto the Value of what is recovered, be ſafely kept to ſatisfy the Plaintiff, if the Judgment be affirmed for him; ſo that Execution may be done of the firſt Judgment upon the ſame Goods.

B And if Judgment be given before the Sheriffs of *London* for the Plaintiff, and the Defendant ſueth a Writ of Error, and removeth the ſame before the Mayor and Sheriffs in the Huſtings, and when he hath removed it by a Writ of Error, if he will proceed no further upon the Writ, *&c.* then the Plainant who recovered ſhall have a ſpecial Writ unto the Mayor and Sheriffs, that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he ſhall have an *Alias* and a *Pluries*, *vel Cauſam nobis ſignifices* in the *Pluries*, if he will not proceed, *&c.* And this Writ was deviſed by *Parning*, then Lord Chancellor, and by him diligently examined, as it appeareth by the Regiſter.

C And if Falſe Judgment be given in *Ireland*, the Party may ſue a Writ of Error in the King's Bench in *England*; and the Writ ſhall be ſuch: Ant. 22. E.

The King to his beloved and faithful A. *his Juſtice of* Ireland, *greeting: Becauſe in the Record and Proceſs*, &c. *Error*, &c. *to the great Damage of him the ſaid* B. *as we have been informed by his grievous Complaint: We*, &c. *that you ſend to us the Record and Proceſs of the Plaint aforeſaid, with all Things touching them, under your Seal diſtinctly and openly, and this Writ, ſo that we may have them (ſuch a Day)* &c. *that we inſpecting the Record and Proceſs aforeſaid may further cauſe to be thereupon done that which of Right ought to be done. And do you give Notice to the aforeſaid* S. *that he be then there to proceed in the Plaint aforeſaid, and to do and receive that which our Court ſhall conſider in the Premiſſes. Witneſs*, &c.

Error.

D THE *King to his beloved and faithful* I. *of* T. *greeting: Becauſe in the Record and Proceſs, and in the giving of Judgment of the Plaint which was before you and your Companions our Juſtices of the Bench, by our Writ, between* A. *and* B. *of a Record and Proceſs of an Aſſiſe of Novel Diſſeiſin, which was ſummoned between them, and taken at* S. *before our beloved and faithful* I. *of* I. *and his Companions Juſtices, aſſigned*, &c. *concerning Tenements in* W. *which Record and Proceſs we indeed for certain Cauſes cauſed to come before you, manifeſt Error hath intervened, to the great Damage of him the ſaid* A. *as we have been informed by his grievous Complaint: We being willing that the Error (if any ſhall be) in this Behalf be corrected in due Manner, and that Juſtice be done thereupon to the Parties aforeſaid, as it ought, do command you, that if* (*a*) *Judgment thereof be given, then that you ſend to us as well the Record and Proceſs of the Plaint aforeſaid ſo had before yourſelves, as alſo the Record and Proceſs of the Aſſiſe aforeſaid ſent before you, with all Things touching them, under your Seal*, &c. *ſo that we may have them*, &c. *that having inſpected*, &c.

E And this Writ of Error lieth where the Aſſiſe paſſeth in the County before the Juſtices of Aſſiſe, and afterwards it is removed into the Common Pleas, and there is Judgment given: Now the Party may ſue this Writ of Error, if there be any Error in the Matter; and upon that he may have an *Alias* and a *Pluries*, if the Juſtices will not rectify the Record, *&c.*

(*a*) So that if the *Teſte* of a Writ of Error be before the Judgment, it is no *Superſedeas.* 22 *H.* 6. 6, 7.

See a Writ of Error returnable in Chancery, and the Record ſent thence by *Mittimus* into *B. R.* 50 *Aſſ.* 4.

Note; Error on a Judgment in Aſſiſe does not lie before the Juſtices of *C. B.* For they have no Power to write to them. *Dyer* 250. *per Cur'.*

See *Mag. Char. c.* 11. *Communia placita non ſequantur Curiam noſtram ſed teneantur in aliquo certo loco.*—Here we may note, That although Common Pleas could not be held immediately in *B. R.* yet where there was a Defect (of Power) in the Court where, by Law, they ought to be originally held, they might be held in *B. R.*

As if a Record be brought (into *B. R.*) out of the Common Pleas by Writ of Error, there they may hold Plea thereof to the End of the Suit. So if a Plea on a Writ of Right be removed out of the County Court by *Pone* into *B. R.* And ſo it is, if on a Writ of Meſne, Replevin, or *Nativo habendo*, a *Sicut pluries* be awarded returnable in *B. R.* See 11 *H.* 4. 49. *per Harkford & Gaſcoigne*; and ſee *F. N. B.* 3. 10 *H.*

A And if the Juſtices of that Bench, or other Juſtices, upon the Writ of Error will not certify all the Record, then the Party who ſueth the Writ of Error [25.] may alledge (*a*) Diminution of the Record, and pray a Writ unto the Juſtices who certified before the Record, to certify all the Record; and the Writ ſhall be ſuch:

B *The King to his beloved and faithful* W. *of* T. *greeting: Whereas at the Proſecution of* I. *of* H. *ſuggeſting to us that manifeſt Error had intervened in the Record and Proceſs, and alſo in the giving of Judgment of the Plea which was before you and your Companions our Juſtices of the Bench, by* (*b*) *our Writ, between* W. *of* T. (*c*) *Demandant, and* I. *of* R. (*c*) *Tenant, of fifteen Meſſuages with the Appurtenances in S. We lately commanded you, that if Judgment thereof was given, then you ſhould ſend to us, under your Seal diſtinctly and openly, the Record and Proceſs of the Plea aforeſaid, with all Things touching them, and our Writ which thereupon came to you, ſo that we might have them on the Morrow of Saint* Martin *laſt paſt, whereſoever we ſhould then be in* England; *and now on the Behalf of the aforeſaid* I. *of* H. *it is ſhewn unto us, that although under Pretence of our ſaid Writ you may have ſent before us on the ſaid Morrow the Record and Proceſs aforeſaid in ſome Part thereof, yet other Part of the ſame Record and Proceſs, and alſo certain other Things touching them, ſtill remain before you to be ſent, to the no ſmall Damage and Grievance of him the ſaid* I. *of* H. *Therefore, if ſo it is, then we command you, that you ſend to us, under your Seal diſtinctly and openly, the Reſidue of the Record and Proceſs aforeſaid, and alſo all other Things touching them, which, as is before ſaid, remain before you to be ſent, and this Writ; ſo that we may have them*, &c. (as above).

(*a*) It is a general Rule, That after *In nulla Erratum* pleaded by the Defendant, no Diminution can be alledged: So is 1 *Cro. Robſert* verſ. *Andrews*, *Beer* and *Beecher*'s Caſe, *Moor* 700. and *Dayrel* and *Thynn*'s Caſe, 1 *Leonard* 22. See 7 *Ed.* 4. 25. 9 *Ed.* 4. 32. 1 *Co.* 36. 5 *Co.* 37, *&c.*

But tho' ſuch Diminution cannot be alledged, nor a *Certiorari* granted (after *In nullo Erratum*, *&c.*) at the Prayer of the Party upon Record, yet it may be granted on Information given to the Court by any Perſon (as an *Amicus Curiæ*, *&c.*) of the Defect in the Record: But this is in the Judgment and Diſcretion of the Court, as was held in *Weaver* and *Felton*'s Caſe; entered *Hill.* 1 *Car.* 1. *Rot.* 647. *B. R.* where the Defendant pleaded an *In nullo Erratum*, and then alledged Diminution, and prayed a *Certiorari*, which at firſt was granted, and the Record certified, *&c.* But before this was entered of Record in *B. R.* the Court were informed thereof, and refuſed to receive it, becauſe it came in at the Prayer of the Party, which it ought not to do: But upon Information (by one as *Amicus Curiæ*) they granted it; and at the ſame Time they looked into *Biſhop*'s Caſe, 5 *Co.* 37. *b.* where, though my Lord *Coke* reports, That after *In nullo Erratum* pleaded Diminution may be alledged, yet in the Caſe cited there was no *In nullo Erratum* pleaded, but Judgment was againſt the Defendant by *Nihil dicit*, and then the Diminution alledged, and the *Certiorari* granted at the Prayer of the Party, came Time enough. And note the Reaſon given in 7 *Ed.* 4. 25. by the Judges, Why after *In nullo Erratum* pleaded Diminution cannot be alledged; *viz.* Becauſe it appears by the very Record, that all the Parties thereto are agreed, that it is a true and perfect Record, and therefore the Parties themſelves ſhall not be admitted to contradict their own Agreement, appearing in the Record: Yet it ſeems the Court on Information, *ut ſupra*, may take Notice of the Diminution, and then *ex officio* are to award a *Certiorari ad informandam conſcientiam Curiæ. Quære.*

If a Writ of Error is brought in *C. B.* of a Judgment in an inferior Court, and the Judgment is there affirmed, and then a Writ of Error is brought in *B. R.* on the Judgment ſo affirmed; in that Caſe no Diminution can be alledged of the Record in the inferior Court: For now the Judgment in *C. B.* is only in Queſtion. So reſolved *Paſ.* 20 *Jac.* 1. *B. R. Banniſter* and *Kennedy*'s Caſe.

(*b*) But if the Writ of Error, *&c.* were in the Time of another King, then the Form of this Writ is otherwiſe. *Dyer* 105.

(*c*) It is ſufficient to name them ſo, without ſaying *Filius & Hæres*, or *Aſſignatus*. Yet Error was brought on a Recovery in Covenant againſt one and his Aſſignee. *Dyer* 356.

Dedimus poteſtatem de Attornato faciendo.

C IT ſeemeth, that before the Statutes which gave Power unto a Man to make Poſt. 156.
an Attorney, the Juſtices would not ſuffer that the Plaintiff, or the Defen-
dant, or the Demandant, or the Tenant, ſhould make Attorney in any Ac-
tion, Suit or Bill, in any Court of Record, nor in any other Court which
was not a Court of Record, becauſe the Words of the Writ do command
the Defendant for to appear, *&c.* and that was always taken to be in proper
Perſon.

The Form of Entry in every Action for the Plaintiff, or Demandant, is:
And the aforeſaid Plaintiff hath on the fourth Day offered himſelf, &c. *and the*
aforeſaid Defendant cometh not; *therefore it is commanded to the Sheriff*, *that*, &c.
by which it is taken, that the Plaintiff was to appear in proper Perſon. But
now by the Statutes he may make Attorney in a Court Baron, or other Courts; W. 2. c. 11.
and may make Attorney for Suit Perſonal at the Hundred, or other Court
Baron; but for Suit Real at the Leet, or at the Sheriff's Torn, he cannot do
it by Attorney, but he ought to do the ſame in proper Perſon. But it ſeem-
eth that the King by his Prerogative, and before the Statutes, might give
Warrant unto a Man to make Attorney in every Action or Suit, and that as
well unto the Demandant or Tenant, as unto the Plaintiff or Defendant; and Br. Attorn. 1.
that he may direct his Writs or Letters unto the Judges of Courts, commanding 84.
them to admit and receive ſuch Perſons by their Attorney, and that the Judges
are bound to do the ſame. And it ſeemeth one Cauſe is, becauſe it ſhall (*a*)
not be Error, if the Judge do admit any (*b*) Plaintiff or (*b*) Defendant to
make Attorney in any Suit or Action, in which by the Law he ought not to
make Attorney: *Quod vide* in Title *Error*, *H.* 36 *Ed.* 3. and Title *Attorney*,
T. 37 *H.* 6.

D And if Tenant for Life be impleaded in a *Præcipe quod reddat*, he in the 37 H. 6. 27.
Reverſion may pray to be received to defend his Right upon the Default of
the Tenant, or upon his faint Pleading, and there he cannot pray to be re- Br. Attorn. 1.
ceived by his Attorney. But if he bring a Writ unto the Juſtices out of the 81.
Chancery, teſtifying that he hath made Attorney there, and rehearſe the Cauſe 25 H. 7. 9.
whereof, that is to ſay, becauſe (*c*) he is ſick, or other reaſonable Cauſe, and
commanding

(*a*) *Vide ante* 22. D. 8 *Co.* 50. *b.* 11 *H.* 4. 29. 22 *H.* 6. 13. 24 *Ed.* 3. 25.

(*b*) Where he may appear in Perſon. See 36 *Ed.* 3. F. *Error* 86. 37 *H.* 6. 27. But to admit one who is within Age to appear by Attorney, is Error. 22 *H.* 6. 31. 1 *H.* 5. 6. *Dyer* 262.

(*c*) See 18 *Ed.* 3. 47. in the Caſe of the Earl of *Glouceſter*, who being ſick, *&c.* his Attorney found Sureties for Iſſues, *&c.* becauſe the Warrant was *ad faciend' quicquid prædict' Comes faceret ſi præſens eſſet.* See 4 *H.* 4. 1. 13 *H.* 6. 28. And ſo it is of a Recluſe or Feme Covert.

But if the Writ be *ad recipiend' Attorn' ad defendend'*, *&c.* *Si contingeret* that the Baron makes Default at ſuch a Day. If in caſe the Baron does not make Default, but appears, and renders, and afterwards ſhe makes Default, *&c.* ſhe ſhall not be received by Attorney, but ought to have her general Writ. 9 *H.* 6. 37.

Note; There are three Caſes of *Reſceit*, *viz.* 1. *Quia Prægnans.* 2. *Quia Recluſe.* 3. *Quia in periculo Mortis.* And that the Writ being, *Accepimus*, *&c.* *&* *legale Teſtimonium teſtatur quod Uxor*, *&c.* *ita infirmatur*, *&c.* is good. 19 *H.* 6. 46. *a. b.*

Poſt. 27. D. Plow. 76. Poſt. 27. B.

commanding them to receive ſuch Perſon by Attorney for him in the Reverſion; the Court ought and is bound to receive him by his Attorney. And it is not material, whether the Cauſe put in the Writ be true or not, for it is not traverſable, &c.

Aliter 27 H. 8. Br. Attorney 84.

E And the King by his Letters Patent may licenſe a Man to make a general Attorney *in all Pleas moved and to be moved, and in whatſoever Courts:* And by his Letters Patent he may expreſs who ſhall be Attorney, &c. or may grant to make Attorney whom or who he will, without naming any Attorney by his ſpecial Name.

And the King by his Writ may ſend to any Perſon to receive Attorney for another, ſuch Perſon generally as the other will name, or ſuch Perſons ſpecially; and that may be as well for the Demandant or Plaintiff, as for the Defendant or Tenant.

Regiſter 9. Br. Attorney 84. that is intended of the King's Court; for it doth not extend to baſe Courts, as Court Baron, &c.

And the King may give Authority unto one Perſon to receive Attorney for another in all Pleas and in all Courts, for two or three Years. And the King may grant a *Dedimus poteſtatem* to receive Attorney for another, for a ſpecial Cauſe recited in the Writ, becauſe he is languiſhing, or lame, or decrepid, &c. or ſuch other like ſpecial Cauſe. Or he may grant a *Dedimus poteſtatem* in the Generalty to receive Attorney for another in all Pleas, without expreſſing any Cauſe in certain wherefore he doth ſo.

Vide 32 H. 6. 22.

F And alſo it appeareth by the Regiſter, that the King by his Letters Patent may grant unto the Prior of Saint *John's of Jeruſalem*, that he may make two of his Friars, and name them, &c. in his Place, which is in the Place of a Proctor; that the two Friars ſhall make Attorney for the Prior in every [26.] Action which is pendent, or to be brought againſt him in any Court, &c. and for to challenge his Liberties, and for to defend them.

A And alſo the King by his Letters Patent may grant unto an Abbot, for the Devotion that he oweth to the Houſe, that he may make a General Attorney for all Pleas and in all Courts; and the ſaid Abbot may remove him and put others in his Room, as often as it ſhall ſeem good and needful for him ſo to do: And ſo by this it doth appear, that the King may grant unto all his Subjects to make Attornies in the ſame Manner, without putting or ſhewing any Cauſe in the Letters Patent.

Note; When an Attorney is made, he continues ſo always pending the Plea. If the Tenant makes an Attorney in *C. B.* and afterwards Conuſance is granted, he ſhall be Attorney for the Tenant in the Franchiſe alſo; and therefore the Tenant cannot be eſſoined. Adjudged, becauſe he had an Attorney to remove, &c. So an Attorney in *C. B.* is alſo Attorney at the *Niſi prius*. So an Attorney made at firſt by the Tenant ſhall be Attorney in *C. B.* after the Plea reſummoned; and yet in none of theſe Caſes is the Attorney bound to travel, &c. And expreſly by *Banks*, If the Tenant appear by Attorney in *C. B.* and Judgment is given againſt the Defendant on an erroneous Proceſs, and then the Record is removed by Error into *B. R.* and the Errors redreſſed, ſo that they are to plead again upon the Original, the Attorney made by Warrant in *C. B.* ſhall ſerve alſo in *B. R.* 21 *Aſſ.* 17.

And *Note*; When Judgment is given againſt the Tenant, after the Judgment the Warrant of his Attorney is determined: But the Demandant's Warrant of Attorney is not expired by the Judgment; for he may ſue Execution within the Year; but after the Year he cannot ſue out Execution without a new Warrant. See 8 *Ed.* 3. *pl. penult.* 33 *H.* 6. 44. *a.* 34 *H.* 6. 51. *a. b.* A Warrant of Attorney againſt the Tenant or Defendant ſhall ſerve againſt the Vouchee or Garniſhee. But by *Rikill*, not for him who interpleads with another in a Writ of Ward; *quod Brian conceſſit.* 7 *H.* 4. 3. *pl.* 9. adjudged 8 *H.* 4. 9. *b.* And therefore in the Caſe of Interpleader it muſt be ſaid expreſly, That he is Attorney to cauſe his Maſter to appear, &c.

B And it appeareth by the Regiſter, that the King may grant the ſame as well by Letters Patent under his Privy Seal, as by Letters Patent under his Great Seal.

And when the King makes a General Grant unto an Abbot, or unto any other, to make ſuch General Attornies, then it ſeems the Abbot ſhall come into the Chancery, or ſhall ſend his Deed under his Seal unto the Chancellor, witneſſing that he hath made ſuch and ſuch Perſons his Attornies, *&c.* And thereupon the Chancellor ſhall make Letters Patent unto the Abbot, teſtifying that he hath made ſuch and ſuch Perſons his Attornies in all Pleas and Courts; and upon theſe Letters Patent ſhewed unto the Court, the Judge ought to admit and receive thoſe Perſons for Attornies for the Party; and theſe Letters Patent ſhall be entered upon Record in the Chancery.

C And the King may ſend his Writ unto the Juſtices of the Common Pleas, or unto the Juſtices in Eyre, or other Juſtices whatſoever, teſtifying that ſuch a one hath made his General Attorney in all Pleas and Quarrels moved againſt him or by him, and alſo to challenge his Franchiſes, or to defend his Franchiſes, commanding the Juſtices by the Writ that they receive him for Attorney, *&c.*

There is another Writ alſo in the Regiſter, That the King by his Writ ſhall command his Juſtices in Eyre, that they admit and receive the Claim of ſuch a one to certain Liberties, which he ſhall make and claim before them by his Attorney, becauſe himſelf cannot be perſonally before them at the Day.

D There is another Form of Writ to the Juſtices, that they admit ſuch a one by his Attorney, whom the ſaid Party ſhall make his Attorney by Letters Patent under his Seal.

(*a*) And a Man may make his Attorney before the Juſtices, without making an Attorney in Chancery, or without ſuing any Writ unto the Juſtices, commanding them to admit any Attorney for the Party, Plaintiff or Defendant; as the common Courſe is at this Day for an Attorney for every Party to appear in every Manner of Action, that they can appear by Attorney, and (*b*) put in their Warrants without any ſuch Writs, if not, that they be in Writs of Entry in the *Poſt*, or Writ which is by Covin between the Parties, or a Writ of Right: Then the Juſtices in Diſcretion do not admit any Man to appear as Attorney for the Party Defendant, unleſs the Defendant do before ſome Juſtice confeſs him to be his Attorney, and that the Juſtices do record the Warrant, or otherwiſe that he bring a Writ out of the Chancery, teſtifying that he hath there made Attorney, commanding them to receive him for his Attorney.

(*a*) *Note*; An Infant ſhall not be admitted to be Attorney. 1 *H.* 5. 6.

(*b*) If one appears by an Attorney who has no Warrant of Record, yet if he was admitted before by a Juſtice, and is afterwards entered, it is good. 4 *Ed.* 4. 13. *a. b.* So if one is accepted by the Court to be Attorney before his Appearance. 41 *Ed.* 3. 1, 2. and ſee 14 *Ed.* 3. 45. *b.* where one was admitted conditionally by the Judge, *viz.* if his Maſter would aſſent, and after the Appearance the Maſter aſſented, *&c.* 7 *H.* 4. 4. held good; and ſee 11 *H.* 6. 42.

The Juſtices of *C. B.* may record a Warrant of Attorney taken before a Judge of *B. R.* notwithſtanding the Statute.

A Warrant of Attorney muſt be recorded before Judgment. See now the Statute 4, 5 *Annæ* for Amendment of the Law.

22 Ed. 4. 2. 3 H. 4. 5. 29 H. 6. 43. 42 Ed. 3. 31. 47 Ed. 3. 21. 21 Ed. 4. 77. 8 H. 6. 29. 3 H. 4. 4, 6. 33 H. 6. 28. V. 9 Ed. 4. 36. ante 25.

E But there are divers Caſes in which the Juſtices will not admit the Defendant by Attorney; as, if he came in by *Cepi corpus* (*a*), they will not admit him by Attorney until he hath pleaded ſome Plea, and then in Diſcretion they uſe to ſuffer the Defendant to make Attorney. But if the Defendant come by *Cepi corpus* upon the Exigent, the Juſtices will not admit him to make Attorney, but give him Day by Bail from Term to Term, until the Matter be determined; and that ſeems to be at their Diſcretion for his Contumacy; for in that Caſe, if they do admit him to make Attorney, and to go without Bail, it is no Error; as it ſeemeth unto me.

2 H. 4. 23. 3 H. 4. 2. 41 Ed. 3. 29. 1 H. 7. 25.

F (*b*) At the *Grand* or *Petit Cape* returned, the Tenant may appear by Attorney, and tender to wage his Law, and take Day to wage the ſame; at which Day he ought to appear and make his Law. See 7 *H.* 4. 3.

37 H. 6. 27. acc'.

G And a Man ſhall not make an Attorney againſt the King in any Action ſued by the King. 9 *Ed.* 4. 4. 22 *Aſſ.* 72.

37 H. 6. 27. acc'. 5 H. 7. 3. 5 Ed. 4. 6. 8 Ed. 4. 3.

H Upon a Reſcous returned by the Sheriff, and an Attachment awarded upon it againſt him, the Defendant ſhall not make Attorney; but upon his Appearance ſhall be preſently committed unto the *Fleet.* But if the King ſend a Privy Seal unto them, commanding them that they admit Attorney for him, the Court ought to receive the Attorney without Appearance in proper Perſon.

5 H. 7. 7.

I And a Man ſhall ſue a Writ of Error by Attorney, if he be not in Ward.

One cannot aſſign Errors by Attorney.

K In an Appeal the Plaintiff ſhall make Attorney againſt the Abettors, if he ſue againſt them a *Diſtringas, &c.* even after Iſſue joined. 40 *Aſſ.* 17.

1 H. 7. 27. 7 H. 4. 2.

L In a *Quem redditum reddit* the Defendant ſhall not make Attorney but with Aſſent of the Parties (*c*).

32 H. 6. 22. 39 Ed. 3. 26. after 147. a. 21 Ed. 3. 48.

Con. In a *Quid juris clamat*, or *Per quæ ſervitia*, after a Plea pleaded the Defendant ſhall make Attorney. It ſeemeth likewiſe in a *Quem redditum reddit.* 7 *H.* 4. 2. 44 *Ed.* 3. 34.

Hill. Br. Attorney 36. 15 H. 7. 6.

M In a *Præmunire* the Defendant ſhall not make Attorney without a ſpecial Writ directed to the Juſtices.

9 Ed. 4. 2. ac'. 32 H. 6. 22.

N After a *Capias ad computandum* awarded, the Defendant ſhall not make Attorney.

9 H. 7. 11.

O (*d*) A Man may demand Conuſance of Pleas by Attorney.

3 H. 7. c. 1. Raſtal, Murder 2.

P (*d*) The Plaintiff after Appearance ſhall make Attorney in an Appeal by the Statute of *H.* 7.

(*a*) Treſpaſs was brought againſt *A.* and *B.* the Defendant comes in by *Cepi corpus*, where in the *Capias* the Words *(de Banco)* were omitted. And yet becauſe the Roll was right, he could not make an Attorney. 8 *H.* 5. 2.

(*b*) The Meſne ſhall not join in Aid with the Tenant in Replevin by Attorney: But the Leſſor by Proceſs may join by Attorney with the Leſſee *Plaintiff in Replevin.* 4 *Ed.* 3. F. *Joinder in Aid* 16, 17. 1 *H.* 4. 28.

(*c*) See *Dyer* 135. *b.* A *Dedimus poteſtatem* to Juſtice *Saunders* to reſort to the Defendant in a *Quid juris clamat* to receive an Attorney to plead, *&c.* (ſo to receive an Attornment) *propter Impotentiam & Senectutem.*

Note; The Matter and Subſtance of the Plea is contained in the Writ. See 48 *Ed.* 3. 57. 7 *H.* 4. 2. 1 *H.* 7. 27. 6 *H.* 7. 10.

(*d*) See 15 *H.* 7. 9. 9 *Ed.* 4. 2. 40 *Aſſ.* 17. 21 *Ed.* 4. 73. 8 *Ed.* 4. 313. *Bro. Attorn.* 91.

A (*a*) He who pleads *Miſnomer* ſhall not make Attorney; *quod vide P.* 41 *Ed.* 3. & *M.* 45 *Ed.* 3. *Fitz. Attorney* 52.

[27.]
27 H. 8. 11.

B In a *Scire facias* upon a Charter of Pardon, the Plaintiff in the *Scire facias* ſhall not make Attorney; but with the Aſſent of the other Party he may.

2 R. 3. 9.
41 Ed. 3. Attorney 50.

C (*b*) A Feme Covert may be Attorney for her Huſband.

2 R. 3. 9.

D (*c*) At the *Sequatur ſub ſuo periculo*, the Vouchee ſhall not enter into the Warranty by Attorney.

Perkins 41.
11 H. 4. 28.
Newton acc'.

E In *Attaint* the Petit Jury ſhall make no Attorney.

21 H. 7. 39.
contra.

F The Defendant ſhall not make an Attorney in *Maihem.* 10 *Ed.* 3. 2.

G An Idiot ſhall not be received to ſue or defend in any Action by Guardian, or by *Prochein Amy*, but ought to be always in proper Perſon. *P.* 33 *H.* 6. *f.* 20. 12 *Ed.* 2. *Bro. Guardian* 26.

21 Ed. 4. 73.
33 H. 6. 18.

H (*d*) An Infant ſhall ſue by *Prochein Amy*; but if the Infant be Defendant in any Action, he ſhall make his Defence by Guardian, and not by *Prochein Amy*. And the Court ſhall aſſign the Guardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 40 *Ed.* 3. *f.* 16.

29 Aſſ. 67.
Aſſiſ. 273.
3 H. 6. 17.
Markham.

An Infant ſued a Writ of *Waſte* againſt his Guardian, and made Attorney in that Action. 48 *Ed.* 3. 10. 13 *Ed.* 3. *Bro. Guardian* 24.

An Infant was received to ſue an Action of *Debt* by his Guardian. 16 *H.* 7. 5.

34 H. 6. 32.
It ought to be ſued in proper Perſon by one of full Age.

I (*e*) And a Man ſhall not anſwer as Guardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *Prochein Amy* to an Infant he ſhall ſue an Action without a Warrant.

34 Aſſ. 5. acc.

K The Infant ſhall not remove his Guardian, nor diſavow an Action ſued for him by *Prochein Amy*. *Anno* 43 *Ed.* 3. *Lib. Aſſ.* & *Anno* 27 *Ed.* 3. *Lib. Aſſ.* 53.

L And the King by his Letters Patent may make a General Guardian for an Infant, to anſwer for him in all Actions or Suits brought or to be brought in all Manner of Courts. Or may make two or three Guardians jointly and ſeverally to anſwer for him, or to bring any Action for him; and at the Requeſt of the Infant may grant by the ſaid Letters Patent, that the ſame Guardians may make other Guardians jointly or ſeverally in their Places, to ſue or defend for the ſame Infant in all Actions and Suits which are brought or ſued, or ſhall be brought or ſued after.

M And the Infant ſhall have a Writ in the Chancery for to remove his Guardian, directed unto the Juſtices, and for to receive another, &c. and the Court at their Diſcretion may remove the Guardian, and appoint another Guardian.

(*a*) Not he who acknowledges himſelf a Villein. 21 *Ed.* 3. 10. *a.* But otherwiſe, if his Plea of Villeinage be in Bar. 29 *Ed.* 3. 41. *a. b. Kelw.* 135.

(*b*) *Bro. Attorney* 91.

(*c*) See 11 *H.* 4. 28. That he ſhall not do it *gratis* at the firſt Day of Vouching.

(*d*) 40 *Ed.* 3. 16. *Weſt.* 2. *c.* 15. 27 *H.* 8. 11. 3 *H.* 6. 16. 1 *H.* 5. 6. 29 *Aſſ.* 67. 27 *Aſſ.* 53. *Quære* 2 *Cro.* 641.

(*e*) 19 *Aſſ. pl.* 103. 4 *Aſſ. pl.* 5. 33 *Aſſ. pl.* 3. 34 *Aſſ. pl.* 5. 33 *Ed.* 3. F. *Guardian, pl.* 25.

3 H. 6. 16. An Infant appeared by Guardian, although it be in a Perſonal Action; but *quære* if he can ſue Perſonal Action by Prochein Amy. 8 H. 6. 8. Aſhton.

And ſee in the Regiſter, after the Writ of *Protection cum clauſula Nolumus,* N
Writs directed unto the Bailiffs of Hundreds to receive and admit ſuch Per-
ſons by Attorney in Court, which the Party will make under his Seal, or
otherwiſe: And alſo Writs of *Dedimus* (*a*) *poteſtatem* to remove Attornies
made, and to put others in their Places, or to remove any of the Attornies,
and to put another in his Place. And if a Man make Attornies in Chancery
to anſwer and defend in other Courts, he may come in Chancery and remove O
him, and make others his Attornies: And thereupon he ſhall have a Writ
unto the Juſtices of the Court where the Attorney is, teſtifying that he hath
removed him, and made another his Attorney, commanding them for to re-
ceive him, &c.

3 H. 4. 18. Feme proceeded to be received and plead, which was not by Attorney.

There is a *Dedimus poteſtatem* granted in the Regiſter to receive an Attorney P
for him who is Vouchee, becauſe he is received for the Default of Tenant for
Life: And a Writ directed unto the Juſtices to receive an Attorney for a Wo-
man, who prayeth to be received for the Default of her Huſband, before ſhe
be received. And another Writ unto the Juſtices, to receive Attorney for Q
one Defendant, and Guardian for another Defendant.

21 H. 6. 48. cont. before 25. e.

In *Quale jus* awarded, where a *Scire facias* ſhall be awarded againſt the R
Lords mediate and immediate, they ſhall have a Writ directed to other Per-
ſons to receive Attorney for them to appear to this *Quale jus* to defend their
Right; and upon Certificate thereof in the Chancery, he ſhall have a Writ to
the Juſtices before whom the *Quale jus* is to be tried, to admit him who is
received Attorney, and ſo returned in the Chancery, for Attorney for the Lords
in that Action.

Ante 25. D.

In Detinue or Ward, where ſhall be Interpleading, they ought to appear in S
proper Perſon and interplead, &c. And yet upon reaſonable Cauſe he may
make Attorney in the Chancery, and ſhall have a Writ unto the Juſtices to
receive him for his Attorney, and rehearſe the Cauſe wherefore; yet it ſeemeth
it is not material whether the Cauſe be true or no.

Ante 25. D. 3 H. 4. 28.

Alſo there is another Writ in the Regiſter directed unto the Juſtices for T
him in the Reverſion, where Tenant for Life is impleaded, commanding them
for to admit Attorney for him in the Reverſion, if the Tenant for Life make
Default, as he conceiveth he will, and teſtify in the ſame Writ, that he in
the Reverſion hath made ſuch and ſuch his Attornies jointly and ſeverally,
commanding the Juſtices to receive them for Attornies, becauſe that he in
the Reverſion hath ſuch an Infirmity, that he cannot pray to be received in
proper Perſon. And the like Writ for a Feme Covert who hath a Reverſion,
and the Tenant for Life is impleaded, and ſhe conceiveth that her Huſband
will not pray to be received, &c. But in the Writ it ſhall be mentioned,

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(*a*) See 21 *Ed.* 3. 12. In a Writ of Ward brought by Baron and Feme, the Feme by Writ removed her Attorney, and held good. *Quære,* if ſhe may diſavow her Attorney. 33 *H.* 6. 31. And *Note*; If an Attorney appears for one, he may before any Plea pleaded come in and diſavow his Attorney, and the Appearance of the Attorney ſhall be held null and void: But after Plea pleaded by one as Attorney, he cannot come in and diſavow his Plea; but as to that is put to his Writ of Diſceit; yet he may remove the Attorney (by Writ). 8 *H.* 6. 8. See 17 *Ed.* 3. 12.

that the Feme is decrepit, or hath ſome other Infirmity, that ſhe cannot conveniently come to be received in proper Perſon. 19 H. 6. 46.

V There is another Manner of Writ for the Sheriff, or for the Eſcheator, to cauſe the Barons of the Exchequer to admit Attornies for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognizance to do the ſame in proper Perſon. And the Writ is ſuch:

A *The King to his Treaſurer and Barons of his Exchequer, greeting: Becauſe our beloved* B. *our Sheriff of* Suffolk, *is ſo much attending about our certain Buſineſs of great Concern, wherewith we have 'ſpecially charged him, that he cannot be perſonally preſent before you at our Exchequer on the very Morrow of Saint* Michael, *or on the very Octave of* Eaſter *next coming, at his Proffer then there, as the Manner is; we of our ſpecial Favour command you, that for this Time you receive* R. *and* I. *Clerks, whom the ſaid Sheriff before us in our Chancery hath made Attornies in his Place to make his Proffer aforeſaid before you on the ſaid Morrow, or either of them, if both cannot be preſent in the Place of the ſaid Sheriff for this Purpoſe, not in any Manner moleſting or grieving him the ſaid Sheriff for his Abſence on that Day, or on the Octave aforeſaid. Witneſs*, &c. [28.]

And the Eſcheator may have the like Writ for his Proffers to make Attorney. But it ſeemeth this is not a Writ of Courſe, but upon a ſpecial Commandment directed unto the Chancellor by the King to make ſuch Writ, *&c.* And the King may ſend a Writ unto the Treaſurer and Barons of the Exchequer, to reſpite the Account of the Sheriff, and of the Eſcheator; and the Writ ſhall be ſuch:

The King to the Treaſurer and Barons, &c. *greeting: Becauſe our beloved* W. *of* H. *our Sheriff of* Wiltſhire, *is ſo much attending about our certain Buſineſs*, &c. (as above) *that he cannot come before you at our Exchequer on the very Morrow of Saint* Michael *next coming, to his Account of the Iſſues of the County aforeſaid; we have given to him Reſpite for rendering his Account aforeſaid, until the Octave of Saint* Hilary *next coming, and therefore we command you, that you permit him the ſaid Sheriff in the mean time to have that Reſpite. Witneſs*, &c.

Protection.

B PRO*tections* are in divers Forms and of divers Effects, and the King may grant them for divers Cauſes. And there are four Manners of Protections with the Clauſe *Volumus.* One is a Protection, called *Quia profecturus.* And another Protection, *Quia moratur.* And the third is a Protection which the King by his Prerogative may grant; and the ſame is where a Man is Debtor unto the King, the King may grant unto him, that he ſhall not be ſued nor attached, but taketh him into Protection until he hath paid the King his Debt. But now by the Statute of 25 *Ed.* 3. 19. it is ordered, That the Creditor ſhall have an Action againſt the King's Debtor, and ſhall have Judgment againſt him notwithſtanding ſuch Protections. But he ſhall not have Execution againſt the King's Debtor who hath ſuch Protection, unleſs he take upon him to pay the Debts which the King's Debtor owed unto the King; V. 27 Ed. 3. 88. 39 H. 3. 8. & Stat. Prærog. Regis 25 Ed. 3. c. 19.

and then he ſhall have Judgment and Execution againſt the King's Debtor
for both Debts, &c.

Quære. Co. Calvin's Caſe 8. a. There is another Protection *cum clauſula Volumus*; and that is, when the C
King ſendeth a Man in his Service into the Wars beyond the Seas, or into
the Marches of *Scotland*, and there he is detained and kept Priſoner; he ſhall
have a ſpecial Protection reciting the whole Matter; and in the End of the
ſame Protection ſhall be ſuch Clauſe: *Theſe Preſents not to avail after the Delivery* D
of the aforeſaid R. *from the Priſon aforeſaid, if it happen that he is again
to be delivered from the ſame.* And the Form of divers of theſe Protections
doth appear in the Regiſter. But as the Law is now, every Protection caſt
ſhall not be allowed: For if the Protection be to endure for two or three
Years, the Juſtices will not allow the ſame; and therefore the Form of the
Protection at this Day is to endure for one Year and a Day after the Date
thereof, and then to ſue forth a new Protection, if need be. And a Protection E
may be caſt for the Party by a Stranger as well as by the Party himſelf.

39 H. 6. 38, 39. And Protection *Quia profecturus* ſhall not be allowed, if it be preſented F
hanging the Plea, if he be not in a Voyage Royal; and a Voyage Royal is,
where the King goeth to the War, or his Lieutenant, or his Deputy Lieutenant,
and not otherwiſe.

And the Plaintiff cannot caſt a Protection, (*a*) for the Protection is always G
for the Defendant, and ſhall be caſt for him; if it be not in ſpecial Caſes,
38 Ed. 3. 1. where the Plaintiff becometh Defendant. But when a Protection ſhall be allowed,
and when not, appeareth more plainly in the Title of ***Protection*** in the
great Abridgment of the Years, and therefore it is not needful to ſhew it
here.

And by the *Regiſter* a Man ſhall be by Protection, when he ſtayeth *upon* H
the Safeguard of the Weſt-marches of England *againſt* Scotland. Yet *Anno* 22
Ed. 4. ſuch Protection was diſallowed. But I am of Opinion with the *Regiſter*.

A Protection *Quia moratur* upon the Sea was diſallowed, *Trin.* 36 *H.* 6. I
becauſe that the Sea cannot ſtay, and by Conſequence he cannot ſtay upon
the Sea.

And a Protection ſhall be allowed in a Court of Ancient Demeſne, or in K
other Court of Record, as *London*, &c. And when the Plea is removed, the

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(*a*) Nor may the Plaintiff in *Replevin* after Avowry. 20 *R.* 2. F. *Protection* 106. 5 *H.* 5. 5. 24 *Ed.* 3. 26. *contr'* 17 *Ed.* 3. 24. *a. per Shard.* Nor for the Defendant therein after an Avowry by him. 38 *Ed.* 3. 1. *a. Finchden.* 25 *Ed.* 3. 43. Nor the Plaintiff in an *Audita Querela.* 47 *Ed.* 3. 5. *b.* Nor the Defendant therein. 13 *Ed.* 3. F. *Protection* 71. But this is intended when the Eſtate is to be executed, and not when it is already executed, and the Suit is to have Execution: For it ſeems there, if it ſo appear by the Writ, the Protection is allowable at the *Venire facias.* 47 *Ed.* 3. 3, 4. In a *Scire facias* on a Charter of Pardon againſt the Plaintiff, after the Plaintiff has counted, a Protection lies for the Defendant; but not before. 43 *Ed.* 3. 36.

In a *Quod ei deforceat*, after the Tenant has made Title, a Protection does not lie for him. 38 *Ed.* 3. 2. but it does before. 43 *Ed.* 3. 6. But after Title ſo made for the Tenant, it lies for the Plaintiff. 20 *R.* 2. *Protection* 106. 5 *H.* 5. 5.

It lies for the Garniſhee at the Day of the Return of the *Scire facias*; but not after he has made Title. 3 *H.* 6. 18. 9 *H.* 6. 36.

Protection may be allowed: (*a*) And a Protection allowed for one Defendant 7 H. 6. 21.
doth put the Plea without Day for all the reſt; if not that it be in ſpecial *contr'* if they
Caſes, as in Treſpaſs, where they plead ſeveral Pleas, and he ſhall ſue ſeveral plead; vide Plea in Treſ.
Venire facias upon the Iſſue joined againſt them, *&c.* 15 Ed. 4. 27.

And a Protection ſhall be ſometimes diſallowed for Variance betwixt the 4 H. 4. 4.
Writ and the Protection: But ſee that in the Title *Protection* in the Abridgments. 3 H. 4. 5.

L (*b*) Protection ſhall be allowed for an Infant; but there are divers Opinions
amongſt the Juſtices, if it ſhall be allowed for a Feme Covert.

M And how a Protection ſhall be made void, ſee Title *Protection*, and in the [29.]
Title *Repeal* in the Abridgments.

A There is another Manner of Protection, *cum clauſula Nolumus,* as appeareth
in the Regiſter; and that is, where an Abbot or a Prior, or other ſpiritual
Perſon, be in Fear or Doubt that his Goods or Chattels, or his Cattle, ſhall
be taken by the King's Officers for the King's Service; they may purchaſe
B this Manner of Protection *cum clauſula Nolumus.* And by the Regiſter appeareth,
that the King may grant unto a ſecular Man this Writ as well as unto
a ſpiritual Man; and if he do ſo, the ſame is good, *&c.*

C And a Man may excuſe his Default at the *Grand Cape* or *Petit Cape*, by
caſting of a Protection.

And if a Man be eſſoined of the King's Service, the Plaintiff may have a
ſpecial Writ directed unto the Juſtices to diſallow of the Eſſoin, if he be not
in the King's Service, commanding them for to proceed, *&c.*

D And it appeareth by the Regiſter, *f.* 280. that there are divers Manners of
Forms of Protections: Where a Man feareth to travel the Country with his
Merchandizes, or to collect the Alms for the Poor of an Hoſpital, or of the
Church, then they may purchaſe Letters Patent of the King's Protection, commanding
the King's Subjects for to defend them, and to maintain, aid and
aſſiſt them: And the Form is ſuch:

E *The King to all his Bailiffs and faithful People to whom,* &c. *greeting:* A. *hath
beſought us, that whereas he proſecuteth his divers Affairs in our Courts, and elſewhere
within our Kingdom of* England; *and the ſame* A. *by reaſon of ſuch Proſecution
is afraid of Damage, as well to himſelf as to his Men and Servants in
their Perſons and in his Affairs, by certain Perſons emulating him, and by their
Procurement*; (or thus) *Damage of his Body and Loſs of his Goods, which eaſily
may be,* &c. *and Peril which eaſily may happen, we will graciouſly take care of
his Security in this Behalf; we being willing to preſerve Peace and Tranquillity
every where in our Kingdom, have taken him the ſaid* A. *and his Affairs aforeſaid,
proſecuting in our ſaid Courts, and elſewhere within our Kingdom of* England,
*while he ſtays there, and in returning from thence to his own, and alſo his Men
and Servants, and his Things and Goods whatſoever, into our ſpecial Protection
and Defence; and therefore we command you, that you maintain, protect and de-*

(*a*) In a *Præcipe* againſt two, or if two Tenants by Warranty are, and they vouch or plead to Iſſue, and one of them makes Default, yet a Protection lies for the one or the other; and at the Day of the *Petit Cape* the Parol ſhall not be put without Day againſt the other. 5 *H.* 5. 7. Yet 11 *H.* 4. 7. adjudged *contr'*, if it was at the *Grand Cape*, or before Default by him made. 13 *Ed.* 3. *Protection* 70. 19 *Ed.* 2. *Protection* 77.

(*b*) See *Co. Lit.* 130 *a.* That a Protection lies for a Feme *quia Nutrix, Lotrix* or *Obſtetrix.*

ſend him the ſaid A. *in proſecuting his ſaid Buſineſſes in our Courts, and elſewhere within our Kingdom aforeſaid (as is premiſed) in his Staying there, and in his returning from thence to his own, and alſo his Men and Servants, and his Things and Goods whatſoever, not bringing upon them, or, as much as in you lies, permitting to be brought upon them by others, any Injury, Trouble, Damage, Violence, Hindrance or Grievance; and if any Thing has been taken from them as a Forfeit, or been injured, you cauſe Amends to be made to them for that without Delay: Nevertheleſs, provided that he the ſame* A. *do not proſecute, or attempt or preſume in any Manner to attempt or proſecute any Thing, which is in Prejudice of us or our People, or which is againſt, or may tend to weaken an Ordinance lately made thereupon by Lord* E. *lately King of* England, *our Grandfather. In Teſtimony whereof,* &c.

F And theſe Letters may be made and directed to Sheriffs, Admirals, Mayors, and all other Officers, *&c.* And thereby it appeareth, that they ought to ſee and provide, that ſuch Perſons who have purchaſed ſuch Letters, have by reaſon of ſuch Letters Favour and Right done unto them, becauſe it appeareth the King's Will ſo to be, *&c.* And there is the like Protection for thoſe who go with Pardons, or to make Collection for Bridges or Highways; and the like for ſpiritual Perſons; and the like Protection for Merchants Strangers, which go into the Country to gather their Debts, or to ſue for them, *&c.* There is another Form of Protection, which is ſuch:

G (*a*) *The King to all and ſingular our Sheriffs, Eſcheators, Mayors, Bailiffs, Miniſters, and to all our faithful liege People whatſoever, as well Commons of our Town of* Southwark, *as to others within and without the Liberties, who ſhall ſee or hear theſe our preſent Letters, greeting: Know ye, that we have taken into our ſpecial Protection* T. W. *and his Men and Servants, Manors, Lands and Tenements, his Goods and Poſſeſſions, being in* London, Southwark, Hatham *and* H. *in the County of* Surry, *and in* S. C. *and* D. *in the County of* K. *and alſo his Writings and Muniments whatſoever: And therefore we command you, that you maintain, protect and defend him the ſaid* T. W. *and his Men, Servants, Manors, Lands, Tenements, Goods, Poſſeſſions, Letters, Writings and Muniments aforeſaid, not bringing or permitting to be brought upon them, or any of them, any Injury, Trouble, Damage, Violence, Waſte, Deſtruction, or Burning of his Houſes or other his Goods and Chattels, or other Hindrance or Grievance: And by the Faith, Love and Allegiance whereby ye are bound to us, ye may in no wiſe omit, nor may any of you omit theſe Things under a grievous Forfeiture to us. In Teſtimony whereof,* &c. *to continue for one Year. Witneſs,* &c.

H And another Protection for the Prior of St. *John*'s, and for his Priory, *&c.* And thoſe are of divers Forms, as appeareth in the Title of *Protection* in the Regiſter, and therefore ſee them there. But theſe Protections are by the King granted of Grace; for every Man who is a loyal Subject, is in the King's Protection; but theſe Protections are granted to move and excite the King's

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(*a*) Where the King takes the Lands, Goods, *&c.* into his Protection, by reaſon of Dilapidations by an Abbot: In an Aſſiſe againſt the Abbot and one *G. S.* his Leſſee, he ſhall not have Aid of the King: For when a Man is taken into the King's Protection, by reaſon whereof another Man is delayed of his Action, ſuch Protection being without Cauſe, ſhall be no Cauſe to have Aid of the King, which would cauſe further Delay of the Party. 11 *H.* 6. 10.

Subjects to aid and comfort thoſe who have ſuch Protections, in their Buſineſs
which they have to do in the Countries, for the Cauſes mentioned in the Pro-
A tections. And it appeareth by the Regiſter, that every ſpiritual Perſon may
ſue forth a Protection for him and for his Goods, and for their Fermors of [30.]
their Lands for their Goods, that they ſhall not be taken by the King's Pur-
veyors, nor their Carriages or Chattels taken by other the King's Officers.
And it appeareth by the ſame Protection, that King *Edward* in the fourteenth
Year of his Reign, by ſpecial Statute did grant ſuch Privilege to the Clergy,
whom he took into his Protection, with their Goods and Carriages. And
they may have a ſpecial Commiſſion directed unto certain Perſons to arreſt
ſuch Purveyors or Officers, and to ſend them before the King's Council,
there to anſwer their Miſdoings in ſuch Caſe; and for the ſame Protection ſee
the Regiſter, *fol.* 289.

(*a*) *Writ* de Droit de Advowſon.

B A Writ of Right of Advowſon lieth only for him who hath an Eſtate in
the Advowſon to him and his Heirs in Fee-ſimple, or Right of Eſtate
to him and his Heirs in Fee-ſimple in the Advowſon; and if he be diſturbed
to preſent, then he ſhall have the Writ. But if a Man have an Advowſon to
him and the Heirs of his Body begotten, and for Default of ſuch Iſſue, &c.
the Remainder unto him and his Heirs in Fee-ſimple; if he be diſturbed, he
ſhall not have this Writ, but a *Quare impedit*, becauſe he hath not Title to
the Advowſon but in Tail, and he ought to maintain the Action by that Title
that he claimeth the Poſſeſſion of the Advowſon, and that is of an Eſtate in
Tail. And in this Writ he ought to count of his own Poſſeſſion, or of the
Poſſeſſion of his Anceſtor; otherwiſe the Writ doth not lie, and he ought to
alledge Eſplees (*b*) in the Parſon; as in taking of groſs Tithes, Oblations and
Obventions unto the Value of, &c. And the Tenant ſhall come and make
C Defence, and (*c*) may join the Miſe by Battel or Grand Aſſiſe, &c. And ſee
the Form of the Count, and the Defence, and of joining the Miſe, in the
Book of *Entries*, *fol.* 90.

4 Ed. 3. 18. 44 Ed. 3. 25. Wilby Brief 713. and Br. Eſtates 65. Tenant in Tail brought this Writ, and recovered but an Eſtate in Tail. 24 Aſſ. 4. Br. Tail 24. he may have Darrein Preſentment.

D And a Man who claimeth to have Fee-ſimple in an Advowſon, may have a Writ *of Right of Advowſon of a Moiety of the Church*, *or of one third Part*, *or one fourth Part of the Church*, &c. 39 H. 6. 20 a.

(*a*) This Writ being brought by an Abbot Parſon imparſonee, if he counts that he holds to his proper Uſe, &c. he ſhall have Judgment accordingly; but if he counts on a Preſentment, *contra*. See 11 *H.* 4. 88. *a. b.* and *Note*, without ſuch Surmiſe, he ſhall not have ſuch a Judgment nor Execution; and yet upon a general Judgment one ſhall have a *Scire facias* againſt the Parſon to have Execution to hold to one's proper Uſe, &c. See 19 *Ed.* 3. *Judgment* 124. yet *quære* 34 *Ed.* 3. *Quare impedit* 197. 32 *Ed.* 3. *Judgment* 141.

(*b*) And therefore by *Thorp*, If a Clerk be inſtituted, but not inducted, he ſhall not have this Writ of Right of Advowſon. 38 *Ed.* 3. 9. *a.*

(*c*) In this Writ the Summons ſhall be made on the Glebe, and the Glebe ſhall be taken into the King's Hands at the *Grand Cape*. 11 *H.* 6. 3, 4.

And when a Parſon ſueth in the ſpiritual Court for Tithes, which do amount E
31 H. 6. 3. a. unto the fourth Part of the Advowſon, againſt the Parſon of another Pariſh; then that Parſon who is ſued in the ſpiritual Court may purchaſe a Writ which is called *Indicavit*; which Writ is a Prohibition, and ſhall be directed as well unto the Judge of the Court as unto the Party, that they do not proceed in the Plea, *&c.* And then the Patron of that Parſon who is ſo prohibited by the *Indicavit*, may have and ſue a Writ of Right *of Advowſon of Diſmes*; and the Form of the Writ is ſuch:

Command A. *that he render to* B. *the Advowſon of the Tithes of one third Part of the Church of* S. *or of one fourth Part, or of a Moiety of the Church*, &c.

And this Writ is founded upon the Statute of *Weſt.* 2. *c.* 5. in the End of the Statute, and doth not lie of a leſs Part of the Tithes than of the fourth Part of the Church. But it ſeemeth that at the Common Law, before the
See 31. A. Statute, a Writ of *Droit des Diſmes* lay and was maintainable; as, *Command*, &c. *that he render*, &c. *the Advowſon of the Tithes of one fifth Part, or of one ſixth Part of the Church*, &c. And that by the Statute of 18 *Ed.* 3. which is: *Whereas Writs of* Scire facias *have been granted to warn Prelates and other religious Clerks to anſwer* Diſmes *in our Chancery, and to ſhew if they have any Thing, or can any Thing ſay, wherefore ſuch* Diſmes *ought not to be reſtored to the ſaid Demandants, and to anſwer as well to us as to the Parties of ſuch* Diſmes; *that ſuch Writs from henceforth be not granted, and the Proceſs hanging upon ſuch Writs be annulled and repealed, and that the Parties be diſmiſſed from the ſecular Judges of ſuch Manner of Pleas: Saving to us our Right, ſuch as we and our Anceſtors have had, and were wont to have of Reaſon.*

And by that appeareth, That before that Statute the Right of Tithes was F
determined in the King's temporal Court; but the Statute hath now altered the Law. And if a Parſon be ſued in the ſpiritual Court for the fourth Part of the Tithes, for which he purchaſes *Indicavit, &c.* by which the Judges do ſurceaſe; if the Patron of the Parſon which ſueth in the ſpiritual Court hath but an Eſtate in Tail in the Patronage, or for Term of Life, he ſhall not have a Writ of *Droit des Diſmes*, nor other Remedy by the Common Law, to try the Right of the Tithes, for the Feebleneſs of the Eſtate. But if two be ſeiſed of an Advowſon, and unto the Heirs of one of them, they ſhall join
31 H. 6. 14. in a Writ of Right of Advowſon for the Advantage of him who hath the Fee-ſimple.

12 Ed. 4. 13. b. And alſo a Man ſhall not have a Writ of *Indicavit* before that the Party G
St. 34 Ed. 3. hath libelled againſt him in the ſpiritual Court. And he ought to ſhew the Copy of the Libel before the *Indicavit* be granted: And the *Indicavit* doth not lie after Judgment given in the ſpiritual Court.

(*a*) And a Writ of Right *of the Advowſon of the Tithes and Oblations of one fourth Part of a Church* lieth as well as *of the Advowſon of the Tithes of one fourth Part of the Church only.*

(*a*) And the Defendant ſhall have the View, though there be but one Church in the ſame Town. 38 *Ed.* 3. 13. *a.* But one ſhall not have a Writ of Right of Advowſon of the Tithes of a Carve of Land, becauſe it does not thereby appear, whether it be of the Value of a fourth Part of the Church. 18 *Ed.* 2. *Brief* 825.

I If one be Parſon imparſonee, and another be Vicar in the ſame Church, and one of them be impleaded of the fourth Part of the Tithes of the Parſonage, and the other impleaded of the fourth Part of the Tithes of the Vicarage, they ſhall have ſeveral Writs of *Indicavit*, and their Patrons may have ſeveral Writs of Right of Advowſon of the Tithes, *&c.* [31.]

K And it appeareth in 13 *H.* 6. by the Opinion of *Forteſcue*, that before the Writ of *Indicavit* lay of Tithes ſued in the ſpiritual Court, there was no Writ of *Droit des Diſmes* ſued thereupon. But it ſeemeth againſt Reaſon; for the Writ of *Droit* of Tithes lay as well for the Patron, as the *Indicavit* lay for the Parſon.

B And in 31 *Ed.* 1. it appeareth that a Man ſhall have a Writ of Right *of the Moiety of an Advowſon*, where an Advowſon is partible betwixt two Coparceners, and one of them is diſturbed by a Stranger.

But the Writ of Right *of the Advowſon of a Moiety of a Church* lay where two Coparceners do preſent two Parſons to one Advowſon, *&c.* As there are in ſome Churches two Parſons, *&c.*

C And a Writ of Right of Advowſon lieth *of the Advowſon of a Vicarage, or Prebend, or Chapel*, and ſuch like, as well as *of the Advowſon of a Church.* And the King ſhall have ſuch Writ as well as a common Perſon. But a Man D ſhall not tender a Demy-mark againſt the King to inquire of the Seiſin alledged in the King's Count or Declaration, as he ſhall in caſe a common Perſon bring the Writ. Neither ſhall a Man have final Judgment againſt the King, although it be after the Miſe joined betwixt the King and the Tenant.

Co. Lit. 17. b.

Ibid. 294. b.

E And a Man ſhall have a Writ of Right of Advowſon of a Chapel which is a Donative, as well as he ſhall have if it were preſentable, to the Ordinary.

Aſſiſe de Darrein Preſentment.

F THE Form of the Writ of *Darrein Preſentment* for a common Perſon is ſuch:

The King to the Sheriff, greeting: If A. *ſhall make you ſecure*, &c. *then ſummon*, &c. *twelve free and lawful Men of the Neighbourhood of* B. *that they be before our Juſtices*, &c. *ready to recognize by Oath what Patron in time of Peace preſented the laſt Parſon, who is dead, to the Church of* C. *or the laſt Vicar, who is dead, to the Vicarage of* N. *which is vacant, as it is ſaid, and the Advowſon whereof, he the ſame* A. *ſays, belongs to himſelf; and in the mean time let them view that Church, and cauſe their Names to be impanelled, and ſummon* B. *who deforceth him of that Advowſon, that he be* (*a*) *then there to hear the Recognition:*

4 Inſt. 180. Note, That upon Quis advocatus, &c. 20 Ed. 3. Darrein Preſentment 13. per Wilby, and 9 Ed. 2. Ibid. 17. If the Aſſiſe find Title for a Stranger not named in the Writ, a Writ to the Biſhop ſhall be awarded for him; and therefore one cannot make Title to a Preſentment in time of War. 7 Ed. 2. Dar. Preſentment. 26 Ed. 3. 41. Ibid. 4. acc.

(*a*) *Note*; The Party is to be ſummoned at the Church. 11 *H.* 6. 4. *per Martyn*; and in this Action he ſhall not vouch any but him who is Party to the Writ. 21 *H.* 6. 50. *a.*

And have you there the Summoners and this Writ. Witneſs, &c. But for the King the Writ is; *The King to the Sheriff, greeting: Summon by good Summoners twelve free*, &c. and ſhall not ſay, *If the King ſhall make you ſecure*, &c. becauſe the King ſhall not (*a*) find Pledges to ſue an Action, for he ſhall not be amerced, *&c.*

Weſt. 2. c. 5.

Bro. Preſentment 62.

G (*b*) And a Man ſhall have Aſſiſe of *Darrein Preſentment*, although he nor his Anceſtors do preſent to the laſt Avoidance: As if the Tenant for Life or for Years, or in Dower, or by the Curteſy, ſuffer an Uſurpation unto a Church, *&c.* and die, he in the Reverſion, who is Heir unto the Anceſtor who laſt preſented, ſhall have an Aſſiſe of *Darrein Preſentment*, if he be diſturbed. But if a Man preſent, and then (*c*) grant the Advowſon unto another for Life, and he ſuffer one Uſurpation, or two, or three Uſurpations; now at the next Avoidance he in the Reverſion ſhall not have an Aſſiſe of *Darrein Preſentment*, if he be diſturbed to preſent. And that appeareth by the Statute of *Weſt.* 2. *cap.* 5. That the Remedy of the Statute is given for the Heir of him who made the Demiſe, who is in Reverſion, and not for the Leſſor himſelf. 18 *Ed.* 2. *pl.* 20. 6 *Ed.* 3. 41.

10 Ed. 3. Dar. Preſentment 13. If the Aſſiſe find that Tenant by the Curteſy or Tenant in Dower was the laſt who preſented, by that the Heir ſhall have a Writ to the Biſhop, and yet he cannot make Title by that Preſentment: *Contra* in a Quare impedit. And Seton gives the Reaſon, becauſe he cannot convey by them. But if the Heir do alledge the laſt Preſentment in herſelf, and the Aſſiſe be to her by Default, and found *ut ſupra*, yet the Heir ſhall recover: *Contra*, if they be at Iſſue upon that Preſentment.

16 Ed. 2. Darrein Preſentment 20.

H And if a Man preſent unto an Advowſon, and afterwards the Parſon doth reſign, or is depoſed, and the Patron preſents again, and is diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*; and the Form of the Writ ſhall be, *What Patron in time of Peace preſented the laſt Parſon, who is dead, to the Church*, &c. although that he reſign, and be living. And the Form of the Writ is to ſuppoſe that the Defendant doth deforce him of the Advowſon,

(*a*) *Note*; As to Pledges, if a Writ be directed to a Sheriff of a Matter within a Franchiſe, the Plaintiff ſhall find Pledges to the Sheriff, and then the Sheriff ſhall ſend to the Bailiff of the Liberty, but the Bailiff ſhall not take Pledges; and if he does, the Sheriff ſhall be amerced, and a *Sicut alias* ſhall iſſue. 22 *Aſſ.* 3. 14 *H.* 6. 3. 21 *H.* 7. 14. *pl.* 22.

Note; He who ſhall not be amerced on a Nonſuit, ſhall not find Pledges, as the Plaintiff in a *Quid juris clamat*, or *Scire facias*. 11 *H.* 4. 7. 18 *H.* 6. 2.

Note; The Clauſe, *And have you there the Names of the Pledges*, is intended of the Plaintiff's Pledges; but if it be omitted, yet the Writ is good. 26 *Ed.* 3. F. *Brief* 898.

(*b*) See *Kitchin* 118. If the Huſband ſeiſed in his Wife's Right preſent, and then the Wife dies, ſo that he is Tenant by the Curteſy, and then the Church becomes void again, the Huſband ſhall have an Aſſiſe, *&c.* But if Leſſee for Years preſents, and it is afterward confirmed to him for Life on the ſecond Avoidance, he ſhall not have an Aſſiſe, becauſe he is in of a new Eſtate.

(*c*) See 2 *Ed.* 3. 11. The Heir of the Grantee of a Reverſion ſhall avoid this for a Purpriſe on the Tenant for Life; in a *Quare impedit* brought by *Stanhope* againſt the Biſhop of *Lincoln*, this was denied by all but one. But ſee the contrary held by *Moyle* and *Priſot.* 34 *H.* 6. 26, 27. and ſo is 33 *H.* 6. 12.

Note; If a Feme Purchaſer takes a Huſband, who ſuffers an Uſurpation, and the Huſband dies, ſhe is without Remedy. 1 *Ed.* 2. *Quare impedit* 43. Yet it ſeems if the Huſband, and ſhe being enſeint, preſent, and after ſuffer an Uſurpation, *&c.* ſhe ſhall nave a *Quare impedit.* 17 *Ed.* 3. 4. by *Shard* and *Thorp*. See *Dyer* 259. *pl.* 1. and *poſt.* 34. S. that ſhe ſhall have it.

and yet by his Count he counteth, that he or his Anceſtors laſt preſented unto the Advowſon, by which he doth ſuppoſe that he is in Poſſeſſion of the Advowſon; and yet the ſame is good.

I If a Man do preſent unto an Advowſon unto which he hath Right, and afterwards the Incumbent dieth, and a Stranger uſurpeth, and preſenteth unto this Advowſon in the Time of War, and after that Incumbent dieth; now if he who hath Right do preſent again, and be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*, and this Preſentment made in Time of War by the Stranger ſhall not grieve him.

And ſo if a Man preſent unto an Advowſon, and afterwards the Incumbent (*a*) dieth, and another Ordinary doth preſent by Lapſe another Incumbent, and after that Incumbent dieth; now the right Patron ſhall preſent, and if he be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*, notwithſtanding the mean Preſentments.

And ſo if the Guardian do preſent in the Right of the Heir, and the Incumbent dieth, the Heir ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of (*b*) *Darrein Preſentment*, although the Guardian did preſent the mean and the laſt Preſentment. But if a Man preſent unto an Advowſon, and after leaſe the ſame for Term of Years, and after the Church is void, and the Tenant for Years doth preſent, *&c.* and then the Incumbent dieth, and the Leſſor preſenteth, and is diſturbed; it ſeemeth that he ſhall not have an Aſſiſe of *Darrein Preſentment*, becauſe the Tenant for Years did preſent in his own Right. But Tenant for Years ſhall have Aſſiſe of *Darrein Preſentment*, if he have preſented before; and ſo ſhall the Guardian of the Heir, if he have preſented before.

K If a Man uſurp upon an Infant, and preſent, which Infant hath the Advowſon by Deſcent; and afterwards the Incumbent dieth, the Infant ſhall preſent; and if he be diſturbed, he ſhall have an Aſſiſe of *Darrein Preſentment*. But if the Infant purchaſe the Advowſon, and preſent, and afterward the Church become void, and a Stranger preſent, and uſurp upon the Infant, and then the Incumbent dieth, the Infant preſents, and is diſturbed by a Stranger; he ſhall not have (*c*) a *Darrein Preſentment*, but ſhall be put to his Writ of Right.

8 Ed. 2. 96. 20 Ed. 2. Darrein Preſentment 11, 13. Poſt 33. 6 Ed. 3. 41. Darrein Preſentment 4. 7 Ed. 3. ib. 2. 20Ed.3. pl.12. 6 Ed 2. Dar. Preſentm. 16. 20 Ed. 3. ibid. 13 for the Ordinary ſhall preſent in the Right of him who hath Right. Vide 14 Ed. 3. Dar. Preſentm. 19. Berry ſaith, that he hath ſeen the Preſentment in the Name of the Heir. 20Ed 3. ib.12. Green. acc'. 5 H. 7. 16. ac. 50 Ed. 3. Holt contr. 14 H. 7. 12. per Fairfax. [32.] 35 H. 6. 60. MesCom. 230. *Quære*. Yet all is one Deſcent per 11 Ed. 3. Aſſiſe 87. 17 Ed. 3. Darrein Preſentm. 9. Shard; ſhe hath no other Remedy but a Quare impedit. Pole acc'.

(*a*) *Nota bene*; 20 *Ed.* 3. *pl.* 12. 7 *Ed.* 4. 20. 22 *Ed.* 4. 9. *contra per Brian*, *&c.* 6 *Ed.* 2. *pl.* 16. 30 *Ed.* 3. *pl.* 13. *contra* of Tenant in Dower. 5 *H.* 7. 10. *b.* 15. 14 *Ed.* 3. *Darrein Preſentment* 34.

(*b*) *Note*; The Iſſue in Tail may maintain an Aſſiſe of *Darrein Preſentment.* 46 *Aſſ.* 4. *Quære* of Tenant in Dower *ſupra.* 5 *H.* 7. 10, 15. 14 *Ed.* 3. *Darrein Preſentment* 34.

Sir *W. W.* If the Biſhop preſent by Lapſe, pending which the Church avoids, he in Reverſion ſhall not have a *Quare impedit*, but *Darrein Preſentment.* 46 *Aſſ.* 4.

Note; The Statute *Weſtm.* 2. gave a *Darrein Preſentment* to him in Remainder on a Preſentment by the Tenant in Dower, by the Curteſy, *&c.* *Contra*, it ſeems where the Anceſtor of him in Remainder had not preſented. *Quære* 20 *Ed.* 3. *Darrein Preſentment* 13. And Mention is to be made of his Anceſtor's particular Preſentments in ſetting forth his Title.

(*c*) See 35 *H.* 6. 63. *Poſt.* 34.

(*a*) If the Huſband and Wife preſent unto an Advowſon in the Right of the Wife, which is appendant unto a Manor of the Wife's, and after the Huſband alien one Acre, Parcel of the Manor, with the Advowſon in Fee, unto a Stranger, and dieth, and the Stranger preſents, and alieneth the Acre unto another in Fee, ſaving the Advowſon unto himſelf, and then the Church voideth; the Wife ſhall preſent; and if ſhe be diſturbed, ſhe ſhall have an * Aſſiſe of *Darrein Preſentment*, becauſe the Advowſon was ſevered from the Acre; but if the Advowſon were appendant to the Acre, then the Wife ought to recover the Acre before ſhe preſent to the Advowſon.

And Aſſiſe of *Darrein Preſentment* doth not lie for one Coparcener againſt the other, as appeareth *M.* 20 *Ed.* 3. and *M.* 15 *Ed.* 3. *pl.* 10. *Poſt.* 34. N. P. A

20 Ed. 2. Dar.Preſentm. 11 and 13. but they ſeem to make a Difference, when the Diſturbance is before the Compoſition to preſent by Turns, and when after.

33 H. 6. 32. The Church never is litigious betwixt Parceners; for if they cannot agree, the Ordinary ought to admit the Preſentee of the eldeſt; but contrary of Joint-tenants.

And if one Defendant die in a *Darrein Preſentment*, the Writ is good by the Survivor againſt the other. B

If a Diſturber preſent unto an Advowſon, and the Patron bring an Aſſiſe of *Darrein Preſentment*, and pendent the Writ the Incumbent dieth, if the Diſturber preſenteth another Incumbent and dies; yet the Patron ſhall have an Aſſiſe of *Darrein Preſentment* upon the firſt Diſturbance againſt the Heir of the Diſturber, *per* Journeys Accounts; and ſo if the Diſturber preſent two or three Times within the ſix Months, the very Patron ſhall have an Aſſiſe of *Darrein Preſentment* upon the firſt Diſturbance. C

34 Ed. 3. 16. 12 R. 2. Counterplea de Vouch. 433.

This Proviſo is taken away by Weſt. 2. 29.

And it was provided before the Lord the King, the Archbiſhops, Biſhops, Earls and Barons, that for the future no Aſſiſe of Darrein Preſentment *be taken of Prebendal Churches, nor of Prebends.* Hil. 19 H. 3. Vide poſt. 35. R. D

(*b*) *Quare impedit.*

THE Form of the Writ of *Quare impedit* for the King in the Right of the Crown is ſuch: E

The King to the Sheriff of Lincolnſhire, *greeting: Command* W. *Archbiſhop, and* R. *that they permit us to preſent a fit Perſon to* (*c*) *the Church of* W. *which*

(*a*) See *Poſt.* 34. 17 *Ed.* 3. 3. 22 *Ed.* 3. 6. and *Co. Lit.* 333. *a.* 363.

* *Poſt.* 36. F. 22 *Ed.* 3. 6. 17 *Ed.* 3. 3.

(*b*) *Note*; The Summons in this Writ ſhall not be made at the Church, as it ſhall be in a Right of Advowſon, for in this Writ the Advowſon is not demanded, but the Diſturbance is to be puniſhed for the Damage done to the Perſon, by *Danby* and other Juſtices. 11 *H.* 6. 3.

(*c*) *Note*; There needs not the Name of the Saint, as, *ad Eccleſiam de Sancta* M. *de* W. except there be more Churches in the ſame Vill. 9 *Eliz. Dyer* 259. 13 *H.* 4. 872.

Note alſo; A Writ brought by the King or Queen is not *unde queritur*, that the Defendant *injuſte*, *&c.* 18 *Ed.* 3. 1, 2. (as it is in the Caſe of a common Perſon); alſo if the Words *ut dicitur* be omitted, the Writ is good; yet ſee 38 *Ed.* 3. 31. That in the King's Caſe it ſhall be *ut dicitur*, but in that of a common Perſon, in all Writs it ſhall be *ut dicit*, and if it be *ut dicitur*, the Writ ſhall abate. 17 *Ed.* 3. 50, 74.

is void, and belongs to our Gift, and whereof W. *Archbiſhop, and* R. *unjuſtly hinder us, as it is ſaid: And unleſs,* &c. *ſummon,* &c. *the aforeſaid Archbiſhop and* R. *that they be before us,* &c. *or before our Juſtices of the Bench,* &c.

Vide Fitz. Nat. Brev. 25. Where a Man may have an Aſſiſe of Darrein Preſentment, there he may have a Quare impedit, but not *econtra.* C. 5 Part 102. In a Quare impedit, the Writ was *to the Church*; and the Count *of the Advowſon of two Parts.*

For the King may ſue this Writ, and every Writ, in what Court he will.

F And if the King hath Title to preſent unto an Advowſon, by reaſon of the Lands and Temporalties in his Hands, of a Biſhoprick, or Abbey, or Guardianſhip of an Heir, then the Writ is:

The King to the Sheriff of Lincolnſhire, *greeting: Command* W. *Archbiſhop, that he permit us to preſent a fit Perſon to the Church of* W. *which is void, and belongs to our Gift by reaſon* (*a*) *of the Biſhoprick of* Canterbury *being lately vacant and in our Hands; and whereof the ſame Archbiſhop unjuſtly hinders us, as it is ſaid,* &c.

And if it be unto the Prebend, then thus: *To the Prebend of* I. *in the Church,* &c. *which is void,* &c. *by reaſon of the Biſhoprick,* &c. And if it be by reaſon of Ward, then the Writ ſhall be; *Which is void, and belongs to our Gift by reaſon* (*b*) *of the Wardſhip of the Land and Heir of* T. *ſome time Earl of* A. *deceaſed, who held of us in Chief, being in our Hands; and whereof the aforeſaid,* &c. *unjuſtly hinders us,* &c.

And if it be by reaſon of Wardſhip by occaſion of another Wardſhip, then the Writ is; *Which is void, and belongs to our Gift by reaſon of the Wardſhip of the Land and Heir of* J. T. *being in the Hands of Lord* E. *lately King of* England, *our Father, by reaſon of the Wardſhip of the Land and Heir of* S. *of* C. *ſome time Earl of* Glouceſter, *deceaſed, of whom the ſame* J. *held his Land by Knight's Service, being in the Hands of our ſame Father; and whereof the ſame,* &c. *unjuſtly hinders us, as it is ſaid.*

G And by the Regiſter the King ſhall join with another Perſon in a *Quare impedit*; and the Form of the Writ is ſuch (*c*):

The King to the Sheriff, &c. *Command* R. *of* C. *that juſtly,* &c. *he permit us and* P. *of* T. *to preſent a fit Perſon to the Church of* K. *which is void, and by reaſon of the Wardſhip of the Land and Heir of* I. *who was the Wife of* T. *of* N. *who held of us in Chief, deceaſed, being in our Hands, belongs to the Gift of*

(*a*) *Ratione Epiſcopat'*, i. e. *Temporalium Epiſcopatus.* 15 *Ed.* 3. F. *Brief* 679. *ratione Abbatiæ vel Epiſcopatus.* 39 *Ed.* 3. 21. But if it be by Alienation without Licence, the Writ is general, and the Count ſpecial. 14 *Ed.* 3. *Quare impedit* 54.

(*b*) A Writ was brought by the Queen in the like Caſe, *Ratione minor' ætat'* I. *filii & hæredis* S. *in cuſtod' Reginæ exiſten' de qua præd'* S. *Terram ſua' tenuit in Capite*, where by the Count it appeared, that he held of one *G.* who was the Queen's Ward, and yet held good. 24 *Ed.* 3. 54.

(*c*) It is held by ſome, there is a Diverſity, *viz.* Where the King has Part of a Thing *ratione Prærogativæ*; there, if it be intire, he ſhall have the whole, as if one of the Obligees be *Felo de ſe*, or outlawed, the King or his Aſſignee ſhall have the Action ſole; but if he has Title to a Parcel or Part, by another, there the King may join, as if an Obligation be made to a Cuſtomer for Cuſtoms, *&c.* there the King and the Cuſtomer ſhall join. See 8 *Ed.* 4. 4. *a.* 24. *b.* 19 *H.* 6. 47 *a.* 10 *H.* 4. 3. *Dyer* 95. *Poſt.* (or *Lib. Parliament.*) 288.

us and of him the ſaid P. *of* T. *and whereof the aforeſaid*, &c. *unjuſtly hinders us and the before-mentioned* P. *of* T. *&c.*

11 Ed. 3.
Br. Quare imp.

But now the common Opinion is, That the King ſhall have the whole Preſentment alone, and alone ſhall have the Action. But methinks that it ſtands with Reaſon, that the King and the other join; as in a popular Action the Party ſhall ſue for the King and for himſelf, and the Words of the Writ are, *Who ſues as well for the Lord the King as for himſelf*, &c. and that in an Action of Debt, *&c.* and by the ſame Reaſon the King may ſue for himſelf and for the Party. And the common Experience is, that a Man ſhall hold Lands in common with the King, and alſo Chattels: And by the ſame Reaſon they may have the Preſentment or Advowſon in common.

See 20 H. 4. 3. contr. and 9 H. 6. 60. contr. but not jointly.

And if a Man be diſturbed to preſent unto a Parſonage, then the Writ H
ſhall be, (*a*) *Command*, &c. *that he permit him to preſent*, &c. *to the Church*,
&c. for the Word *Eccleſia* is always intended a Parſonage. And if it be a
Vicarage, then the Writ is, *That he permit him to preſent to the Vicarage.*
And if it be a Prebend, then, *to the Prebend*; and if a Chapel, *to the Chapel*;
and ſo he ought to (*b*) name the Advowſon as it is, *&c.* 8 *H.* 6. 22.

[33.]
14 Ed. 4. 2.
31 Ed. 3. 185.
2 R. 3. Quare impedit 102.
1 H. 5. 1, 2.
17 Ed. 3. 12.
44 Ed. Quare impedit 76.
21 H. 6. 17.
infra C. D. H.

A Man ſhall not have a *Quare impedit de Advocat' medietatis, nec de medietat'* A
Advocationis, &c. And if one Man hath the Nomination unto an Advowſon, B
and another hath the Preſentation, if he name his Clerk, and he who hath
the Preſentation preſent (*c*) another Clerk; he which hath the Nomination
ſhall have a *Quare impedit*, and the Writ ſhall be, *That he permit him to preſent*,
&c. and in his (*d*) Count he ſhall ſet forth the ſpecial Matter, and it
ſhall be good.

(*e*) And ſo if a Man hath a Chantry, which is a Donative by Letters Patent, C
and he give the ſame unto a Clerk, who is diſturbed by another, or
another doth preſent to his Chantry, or giveth the ſame by Letters Patent;
he which hath Right ſhall have a *Quare impedit* of that Donative; and the
Writ ſhall be, *That he permit him to preſent*, &c. *to the Chantry*, &c. and in
the Count he ſhall ſet forth the ſpecial Matter. See 14 *H.* 4. 11.

(*a*) And *Note*; Such Writ was at the Common Law. 14 *H.* 3. *Quare impedit* 183. *ad Capellam.* 2 *H.* 3. *Grants* 89. *ad Vicariam.*

(*b*) In a *Quare impedit præſentare ad Eccleſiam*, it is a good Plea to the Writ, that it is but a Chapel; for *Eccleſia* ſhall be intended a Pariſh Church. 5 *Ed.* 3. 60. 22 *Ed.* 3. 2. *a.* 12. *a.* 8 *H.* 6. 32. *a.* 37. *a.* 13 *H.* 4. *Brief* 870. *&* *infra* E. F.

(*c*) See accordingly 1 *H.* 5. 1, 2. 4 *Ed.* 3. 69. 21 *H.* 6. 17. *a.* and he ſhall have a Writ to the Biſhop to admit the Preſentee whom he has named to another, whether the Writ be brought againſt him who had the Preſentation, or againſt a Stranger; yet ſee 24 *Ed.* 3. *Quare impedit* 27. and 2 *R.* 3. *Quare impedit* 102. that it lies not for him who has only the Nomination.

(*d*) See accordingly 22 *Ed.* 4. 22. *a.* 14 *Ed.* 4. 2. *b.* and 14 *H.* 4. 11. the Writ *Quod permittat nominare* was abated by Award in the like Caſe.

(*e*) A *Quare impedit* of a Chantry ought to ſhew in what Church or Chapel the ſame is. 12 *H.* 4. 19. See *Lib. Intr.* 499.

A *Quare impedit* lay of a Chapel at Common Law. 24 *H.* 3. *Quare impedit* 183. And ſo it did of a Prebend. 13 *R.* 2. *Brief* 643.

Note; A *Quare impedit* of a Prebend muſt be brought in the County where the Cathedral Church is, and not in the County where the Body of the Prebend lies. 15 *Ed.* 3. *Brief* 235, 643.

D And if a Biſhop be diſturbed to preſent where he ought to make Collation, the Writ ſhall be, *That he permit him to preſent*, &c. and he ſhall count upon the Collation. (*a*)

E (*b*) And ſo if the King be diſturbed to collate by his Letters Patent unto his free Chapel, he ſhall have a *Quare impedit*, and the Writ ſhall be, *That he permit him to preſent*, &c. *to the Prebend* in his free Chapel, *&c.*

F And a *Quare impedit* lieth of a Priory, or of an Abbey; and the Writ 14 H. 4. 36. b.
ſhall be, *That he permit him to preſent to* (*c*) *the Priory or Abbey*, &c. See
the Book of *Entries* 59. and 18 *Ed.* 3. *Quare impedit* accordant 151

G And there is another Form of Writ, *That he permit him to preſent to the Church of the Houſe of* Saint Martin of Briſtol, *which is void*, &c. and ſo of an Hoſpital, and the like. *Vide Lib. Entr.* 506.

H And a Man ſhall not have a *Quare impedit* if he cannot alledge a Preſent-
ment in himſelf or in his Anceſtors, or in another Perſon, from whom he
claimeth the Advowſon, and that in his Count, if it be not in ſpecial
Caſes: As if a Man at this Day erect a Church parochial by a Licence
of the King, or other Chantry, which ſhall be preſentable, *&c.* if he be 21 Ed. 4. 2, 3.
diſturbed to preſent to the ſame, he ſhall have a *Quare impedit*, without 16 H. 7. 8.
alledging of Preſentment in any Perſon, and ſhall count upon the ſpecial Keble ac.
Matter.

I (*d*) And if a Man doth recover an Advowſon againſt another in a Writ Poſt. 36.
of Right, when the Church voideth he ſhall preſent, and if he be diſturbed,
he ſhall have a *Quare impedit*, and alledge the Preſentment in him againſt
whom he recovered, without alledging any other Preſentment. And a Poſt. 35. O.
Man ſhall have a *Quare impedit*, and alledge a Preſentment by his Proctor,
and it ſhall be good, without alledging a Preſentment in himſelf: *Quod
vid.* 17 *Ed.* 3.

K (*e*) And if an Abbot hath been Parſon imperſonee Time out of Mind, C. 2. Part
and afterwards the Abbey is diſturbed, he of whom the Advowſon is holden 47. b. ac.
ſhall preſent, and if diſturbed, ſhall have a *Quare impedit*, without alledg-
ing of any Preſentment in the Count, but ſhall ſhew the ſpecial Matter.

L (*f*) If Coparceners make Partition to preſent by Turns, and ſo do, Ant. 32 G.
and afterwards the younger Siſter die, her Heir within Age, and in Ward 22 Ed. 4. 9.

(*a*) See 16 *Ed.* 3. *Brief* 660. *Raſt. Ent.* 501. 17 *Ed.* 3. 64.

(*b*) See 13 *H.* 4. *Brief* 870. where *Eccleſia* ſhall be intended a parochial Church. See 16 *Ed.* 3. *Brief* 660. *ant.* H.

(*c*) *Note*; A Priory may be Parochial and Preſentative, and then the Writ may be, *Ad Eccleſiam.* 13 *H.* 4. *Brief* 870. 18 *Ed.* 2. *Brief* 828. and *Treſpaſs* 237.

(*d*) See 14 *Ed.* 2. *Quare impedit* 171, 172. where he may have a *Scire facias* on the Judgment for the Diſturbance, but that on the Judgment in a Writ of Right, he had Seiſin delivered by the Sheriff; yet for that he cannot have Seiſin of the Church without a Preſentment; when the Church avoids, he ſhall have a *Scire facias* for the Preſentment. 15 *Ed.* 2. *Quare impedit* 172.

(*e*) In a *Quare impedit*, the Plaintiff ought to declare that the Preſentment was made in Time of Peace. 18 *Ed.* 2. *Quare impedit* 175. *ant.* 31.

(*f*) See 21 *Ed.* 3. 32. If the King has an Advowſon in Common, or with another, as by reaſon of Nonage of an Infant who has Title to preſent by Turn, or otherwiſe, the King by his Prerogative ſhall have the Preſentment on every Avoidance, as long as any of the Lands are in his Hands. See 21 *Ed.* 3. 27. The King made Title only to the fourth Avoidance by Reaſon of Wardſhip of the Parcener, after Partition made.

31 Ed. 3. Quare Impedit 2.
38 H. 6. 9.
Dyer 322.
21 Ed. 3. Br. Quare Impedit 73.

to the King, and afterwards the Church void two or three Times during the
Nonage of the Heir, who is the King's Ward; the King ſhall preſent, and
if he be diſturbed, he ſhall have a *Quare impedit* alone, as it appeareth *Mich.*
22 *Ed.* 4. But, ſaving the Opinion of the Book, I conceive the Law to be
otherwiſe; becauſe the Inheritance of the Preſentment is (*a*) ſeveral, *&c.* M

(*b*) And if two Siſters be, and have an Advowſon which becometh void,
the eldeſt Siſter ſhall have the firſt Preſentment; and ſo the Huſband of the
eldeſt Siſter (if he be Tenant by the Curteſy of the Advowſon) ſhall have the
firſt Preſentment; and the Tenant in Dower ſhall have but the third Preſentment, *&c.*

16 H. 7. 8.
3 Cro 196.
18 Ed. 3. 22.
24 Ed. 3. 29.
39 Ed. 3. 21.
See 34 P.

(*c*) If the King have an Advowſon in Fee, which voids, and during the N
Avoidance the King granteth the Advowſon in Fee, the King ſhall not preſent
to this Avoidance: But if the King have an Advowſon by reaſon of the
Temporalties of a Biſhop, and during the Avoidance the King reſtore the Biſhop
the Temporalties, yet he ſhall preſent unto the Advowſon, and not the
Biſhop, for this Avoidance.

(*d*) If the Heir ſue his Livery and hath it, yet the King ſhall preſent unto O
an Advowſon which became void during the Time that the Advowſon and
Land were in the King's Hands. (*e*)

24 H. 8.
Dyer 4. C. 3. Part 3.
50 Ed. 3. 26. ac. Vid. after 34 K, and 35 A.
29 Ed. 3. 5.
27 Ed. 3. 89.

(*f*) If a Man be ſeiſed of an Advowſon in groſs or in Fee appendant unto P
a Manor, and the Advowſon void, and he dieth, his Executor ſhall preſent,
and not the Heir, (*g*) becauſe it was a Chattel veſted and ſevered from the Q
Manor. And if a Man be diſſeiſed of a Manor unto which an Advowſon is
appendant, and the Advowſon become void, the Diſſeiſee may preſent and
have a *Quare impedit*, although he hath not entered into the Manor. But if R
the Biſhop die, and the Advowſon happen void before his Death, the King
ſhall preſent unto the ſame by reaſon of the Temporalties, and not the Biſhop's
Executors. 8 *Ed.* 2. *Preſentment* 10. 39 *Ed.* 3. 21.

2 H. 4. 19.
40 Ed. 3. 14. after 44 K, 143 E.

(*h*) So if a Man have a Manor unto which an Advowſon is appendant in S
Fee, and the Church void in the Father's Time, and the Father die, and
his

(*a*) But if the King's Tenant dies, having Iſſue three Daughters under Age, the King ſhall have all the Preſentments. See 31 *Ed.* 3. *Quare impedit* 100. 38 *H.* 6. 9. 22 *Ed.* 4. 9. 20 *Ed.* 3. *Quare impedit* 65. 45 *Ed.* 3. 12. 34 *H.* 6. 40.

(*b*) Vide *Poſt.* 34. (O, P) 5 *H.* 5. 16. 18 *Ed.* 3. 22.

(*c*) *Vide contra.* Except there are ſpecial Words of the Avoidance. 16 *H.* 7. 8. *Dyer* 282. 302. *a.* 348. *a.* and See accordant 18 *Ed.* 3. 58. *a* but contrary in the Caſe of a common Perſon, 11 *H.* 4. 54. *b.* and an Avoidance fallen is not grantable by a common Perſon. *Dyer* 283, 348. See *Stamf. Prerog.* 44. 46 *Ed* 3. *Grants* 50. 18 *Ed.* 3. 22, *&c. in Marg.*

(*d*) *Note*; If the King be ſeiſed of a Manor to which an Advowſon is appendant, whereto he has no Right of Seiſin, and afterwards there is an *Ouſter le main cum exitibus*; if an Avoidance happens in the mean Time, and the King has preſented, the Incumbent ſhall not be removed; but if he has not preſented, he ſhall have the Avoidance. See 5 *Ed.* 3. 6. 4 *Ed.* 3. 2. 18 *Ed.* 3. 21. 24 *Ed.* 3. 28, 29. 27 *Ed.* 3. 81, 89. 39 *Ed.* 3. 21.

(*e*) See 18 *Ed.* 3. 22. 46 *Ed.* 3. *Grants* 50. 6 *Ed.* 2. *Preſentments* 9.

(*f*) See 21 *H.* 7. 21. 44 *Ed.* 3. 3. 21 *H.* 6 9. 33 *H.* 6. 33. 9 *Ed.* 4. 39.

(*g*) See 9 *H.* 6. 33. 4 *Ed.* 3. 2. *contra.* 39 *Ed.* 3. 21. *contr. ſed* 44 *Ed.* 3. accordant.

(*h*) *Note*; Though the ſix Months paſs in the Father's Life-time, the King ſhall have the Preſentment againſt the Biſhop, if the Church be not full. 18 *Ed.* 3. 21. *a.* 29 *Ed.* 3. 8. Where the King grants the Advowſon to *A.*
till

his Heir in Ward to the King, the King ſhall have the Preſentment.
18 *Ed.* 3. 21. 27 *Ed.* 3. *Eſtoppel* 240. *Contr.* 39 *Ed.* 3. 21.
T (*a*) Guardian in Socage of a Manor unto which an Advowſon is appendant,
and the Church void, the Heir ſhall preſent, and not the Guardian, becauſe
he cannot account for the ſame.
V If the King grant unto an Abbot and his Succeſſors, that the Monks ſhall
have the Temporalties during the Vacation; now if the Advowſon happen 17 Ed. 3. 51.
void during the Vacation, the Monks ſhall preſent to the ſame. *Mich.* 30
Ed. 3.
A The Preſentation to the Vicarage doth of common Right appertain unto
the Parſon; but he may grant the ſame to another by Aſſent of the Patron Poſt. 34.
and Ordinary.
The Heir in Tail ſhall not have a Preſentment fallen in the Life of the [34]
B Tenant in Tail, but the Executor of Tenant in Tail. (*b*) So the Ter-
mor ſhall have the Preſentment which happeneth during the Term, although
he hath not preſented during the Term to the Advowſon, *&c.*
C (*c*) The King may repeal his Nomination or Preſentation, but a common 7 H. 4. 32.
D Perſon cannot do ſo. And the King ſhall have a Writ unto a Biſhop to Dyer 260.
induct one into a Prebend which the King hath given unto him; and to give 25 Ed. 3. 47.
him a Seat in the Quire, and a Place in the Chapter-Houſe. Robert de Kelſey's Caſe.
E And a Man ſhall have a *Quare impedit* of an Hermitage, and a Writ to
put him into corporal Poſſeſſion.
F (*d*) If the King recover by *Quare impedit*, and afterwards ratify the Eſtate
of the Incumbent; yet at the next Avoidance the King ſhall preſent, becauſe
his Recovery and Judgment for him was not executed. *T.* 9 *Ed.* 3. In a
free Chapel of the King, where the Dean ought to give the Prebends, if he
do not collate within ſix Months unto them, then the King ſhall preſent by
Lapſe to them as Ordinary.
G If an Advowſon be void by ſix Months, at which Time the King is ſeiſed
of the Temporalties of the Biſhoprick, the King ſhall preſent to this Advowſon,
as the Biſhop ſhould do; and the King ſhall have a *Quare impedit* of the
Sub-Deaconry of *York*, which voided when the Temporalties of the Archbi-
ſhoprick were in the King's Hands; and the Writ ſhall be, *That he permit
him to preſent*; and yet the King ſhall give this Sub-Deaconry by his Letters
Patent.

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till his full Age, and the Church avoids, during the Term, and afterwards the Heir preſents, and comes of full Age, before the Church is full, the King ſhall have the Preſentment.

(*a*) It ſeems, the Preſentment ought to be in the Name of the Heir, and yet a Guardian in a *Quare impedit* againſt him may make Title againſt the Stranger in Right of the Heir, and alſo have a Writ to the Biſhop thereupon, but he cannot maintain a *Quare impedit.* 29 *Ed.* 3. 5, 14, 22. 27 *Ed.* 3. 89. *a.* 8 *Ed.* 2. *Preſentment* 10.

(*b*) See 9 *Ed.* 3. 10. 19 *H.* 6. 33. *Perk* 21.

(*c*) The King may repeal his Preſentment, although the Clerk be inſtituted, provided he be not inducted. 25 *Ed.* 3. 47. *a.* 38 *Ed.* 3. 49. But a common Perſon cannot repeal his Preſentation. *Dyer* 292 *a.*

A Patron nevertheleſs may preſent ſeveral Perſons accumulatively, and there ſhall be Room for pleaſing the Biſhop. Lindwood *de Jure Patronatus, cap.* 1. See 14 *Ed.* 4. 2.

(*d*) See a good Caſe that accords herewith, 18 *Ed.* 3. 21. and ſee 9 *Ed.* 3. 20.

31 Ed. 3. Where Partition is made betwixt Coparceners by Licence of the King of an Advowſon in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next Turn dieth, her Heir within Age and in Ward to the King, and the Church void; the King ſhall have a *Scire facias* againſt the other Coparcener, *&c.* upon that Partition, and yet he was a Stranger to the Partition. H

6 Ed. 3. Qu. imp. 39. (*a*) If two Coparceners make Partition to preſent by Turns, although that one of the Coparceners do afterwards uſurp upon the other Coparcener, and preſents in her Turn, that Preſentment ſhall not put her out of Poſſeſſion, but ſhe ſhall have her Turn when it falls again, and ſhall have a *Quare impedit*, or a *Scire facias* upon the Compoſition if it be upon Record, if ſhe be diſturbed for to preſent, *&c.* I

50 Ed. 3. 16. 31 Ed. 3. 4. (*b*) If a Biſhop make a Collation, and before Induction or Inſtallation dieth, and the King ſeiſeth the Temporalties; he ſhall have this Preſentment, becauſe that the Church is not full againſt the King, until the Parſon or Prebend be inſtalled or inducted. K

24 Ed. 3. 33. (*c*) If a Parſon have a Parſonage, and afterwards doth take another Benefice without Diſpenſation; now the firſt Benefice is void, and the Patron thereof may preſent, for this Avoidance is called Ceſſion. L

Br. Preſentment al Egliſe 46. *24 Ed. 3. 26. See Co. Lit. 360. (*d*) If in Time of Vacation of an Abbey or Priory, a Church happen void, which is of the Patronage of the Abbot or Prior, and a Stranger doth uſurp and preſent thereunto; this Uſurpation ſhall not prejudice the Succeſſor *, but at the next Avoidance of the ſaid Church he may preſent, and have a *Quare impedit*; but otherwiſe it is if an Uſurpation ſhall be had in the Time of his Predeceſſor, for that ſhall put the Succeſſor out of Poſſeſſion, if the ſix Months be paſt. M

24 Ed. 3. 26. If a Vicarage happen void, and before the Parſon preſent, he is made a Biſhop, *&c.* yet he ſhall preſent unto this Vicarage, becauſe it was a Chattel veſted in him. N

(*e*) The Founder of a Priory ſhall have a *Quare impedit* againſt the Subprior and the Convent, if they diſturb him to preſent to an Advowſon which belongeth to the Houſe, if it void during the Vacation, where the Founder ought to have the Temporalties during the Vacation. *P. 9 Ed. 3.* O

39 Ed. 3. 21, Ant. 33 N. If a Man traverſe an Office found of a Manor unto which an Advowſon is appendant, and upon the Traverſe (*f*) the King leaſeth the Manor P

(*a*) See 12 *Ed.* 3. 9. 13 *H.* 8. 14. 22 *Ed.* 4. 9. 27 *H.* 8. 111.

(*b*) See 38 *Ed.* 3. 3, 4. And ſo it is of his Tenant who dies before his Clerk is inducted. 38 *Ed* 3. 9. *a.* If the King has a Preſentation *pro hac vice*, and his Clerk dies after Inſtitution, and before Induction, the King ſhall preſent. 18 *Eliz. Dyer* 348.

See *per* W. W. 22 *H.* 6. 27. 21 *Ed.* 4. 34. 38 *E* 2. 41. 11 *H.* 4. 91.

(*c*) See 4 *Co.* 74. *b.* 11 *H.* 4. 37, 60, 91. 5 *Ed* 3. 9.

(*d*) See *Co. Lit.* 263. *b.* *Weſt.* 2. *c.* 5.

If a Parſon be admitted and inſtituted by the Biſhop, he is Parſon againſt every common Perſon before Induction, and has the Cure of Souls, and ſhall have the Profits before Induction. 31 *Ed.* 3. 4. by *Kirton* and *Moreton.* (*Sed Quære per* W. B.)

(*e*) The Patron of an Abbey preſentative brought a *Quare impedit* againſt the Superior (*Subprior*) and Convent. 11 *Ed.* 3. *Quare impedit* 157. 18 *Ed.* 3. 15.

(*f*) For in that Caſe the Leaſe amounts to a Reſtitution, but if the King ſeizes a Priory alien, and leaſes the Priory to Farm during the War, without mentioning the Advowſon, the King ſhall have it. 29 *Ed.* 3. 18. (or 98.)

unto him who tendered the Traverſe without mentioning the Advowſon, and afterwards the Church void, he who tendered the Traverſe ſhall have the Preſentment, if the Traverſe be found for him.

5 Ed. 3. 6.

Q If a Feme be aſſigned the third Part of a Manor unto which an Advowſon is appendant in Dower, ſhe ſhall have the third Preſentment.

R If the Patron be outlawed in Treſpaſs, and the Church void, the King ſhall preſent, becauſe of the Outlawry (*a*).

14 H. 6. 24. Newton.

S (*a*) (*b*) If a Feme purchaſe an Advowſon, and take a Huſband, and the Church void, and the Stranger doth preſent, and the Huſband ſuffer an Uſurpation, &c. by this Uſurpation the Wife ſhall be out of Poſſeſſion after the ſix Months paſt; and ſhe ſhall be put to her Writ of Right of Advowſon, if ſhe have preſented before; and if ſhe have not preſented, ſhe is without Recovery: But otherwiſe is it, if the Feme ſhall have an Advowſon by Deſcent or by Courſe of Inheritance.

Feme is diſturbed and taketh Huſband, the Church void, the Huſband preſents, the ſame ſhall veſt the Right in the Wife.

T If an Infant or a Feme Covert do not preſent within ſix Months, the Biſhop may preſent for Lapſe (*c*).

U (*c*) One Joint-tenant, or Tenant in common, ſhall not have a *Quare impedit* for the Advowſon which they have in common, or in Jointure, if one of them preſent ſolely againſt his Companion. But if two (*d*) Coparceners cannot agree in the Preſentment, the eldeſt Siſter ſhall have the firſt Preſentment, and he who hath her Eſtate ſhall have the firſt Preſentment; and if he be diſturbed by the other Coparcener, ſhe or he who hath her Eſtate ſhall have a *Quare impedit* againſt the other (*e*) Siſter; and the Coparceners, and thoſe who have their Eſtates, ſhall preſent as Coparceners ought to do, *ſcil.* the eldeſt firſt, and then the middlemoſt, and then the third, and then the fourth, and ſo as they ſhall be of Age, &c.

35 H. 8. Dyer 55. Advowſon deſcends to two Coparceners, one of full Age, and the other within Age, the Guardian marrieth the eldeſt, the Church void, he preſents in both their Names, the youngeſt cometh of Age. Some are of Opinion, that if they do not agree the eldeſt ſhall preſent, and it ſhall be her Turn: Others contrary. *Qu.*

X If an Infant have a Manor unto which an Advowſon is appendant, and ſuffereth a (*f*) Uſurpation when the Church becometh void, and afterward at full Age grants the Manor in Fee, and afterwards the Church become void; the Infant ſhall preſent, and not the Feoffee of the Manor, for the Advowſon was ſevered by the Uſurpation; and yet the Infant may preſent to the ſame.

Poſt. 35. M. [35·]

A If the King's Tenant hath Title to preſent unto an Advowſon, which is void, and the ſix Months paſs; and afterwards the King's Tenant dieth before

18 Ed. 3. 21. Ante 33. R.

(*a*) See 26 *Aſſ. pl.* 71. 4 *Ed.* 6. 58. 35 *H.* 6. 63.

(*b*) 1 *Ed.* 2. *Quare impedit* 43. *ante* 31. I. *Weſt.* 2. *c.* 5. 19 *H.* 6. 40. 22 *H.* 6. 26. 43 *Ed.* 3. 15. 22 *Ed.* 4. 9.

(*c*) *Vide poſt.* 35. 6 *Ed.* 4. 10. 27 *H.* 8. 11. 34 *H.* 6. 40.

(*d*) See 9 *Eliz.* 333. *a. Bro. Preſentment al Egliſe* 53, 34, 56, 40.

(*e*) See *Doctor* and *Student* 116. *b. ante* 33. B.

(*f*) See accordant adjudged, 16 *Ed.* 3. F. *Quare impedit* 67. But *contra* by *Danby*, 33 *H.* 6. 13. in the like Caſe. Yet if the King was ſo ſeiſed, and granted the Manor *cum Advocatione*, at the next Turn the Grantee ſhall preſent; *per Cur'.* For it was not made diſappendant by the King's Uſurpation.

See 16 *Ed.* 3. *Bro. Preſentment* 60. That an Infant may preſent.

the Biſhop preſenteth for Lapſe, his Heir within Age, and in Ward to the King, the Biſhop ſhall not preſent for Lapſe, but the King ſhall have this Preſentment by reaſon of the Wardſhip. *P.* 18 *Ed.* 3.

If Tenant in Tail of a Manor, unto which an Advowſon is appendant, diſcontinue the Manor in Fee with the Advowſon, and after the Diſcontinuor granteth the Advowſon unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth ſeiſed of the Manor; his Heir ſhall preſent unto the Advowſon, when it ſhall happen void: And if he be diſturbed, he ſhall have a *Quare impedit*, becauſe he is remitted unto the Manor, and hath not Remedy to come to the Advowſon. 29 *H.* 6. *Quare impedit* 79. B

The Defendant in a *Quare impedit* may ſue a *Quare impedit* againſt the Plaintiff, if his Clerk be not admitted nor inſtituted. And if the Plaintiff's Clerk be inſtituted and inducted pendent the Writ, it ſhall not abate the Plaintiff's Writ; but in that Caſe if the Defendant recover againſt the Plaintiff, he ſhall avoid the Plaintiff's Clerk; and ſo if the Defendant's Clerk be admitted pendent the Writ againſt him, if the Plaintiff recover, he ſhall avoid the Defendant's Clerk: But if the Clerk of the Defendant were admitted and inſtituted at the Time of the Purchaſe of the Writ, and the Plaintiff purchaſe the Writ only againſt the Patron, not naming the Incumbent; although the Plaintiff recover, he ſhall not avoid the Defendant's Clerk, becauſe he might have named him in the *Quare impedit.* C

If a Stranger do preſent unto an Abbey or Priory which is eligible by the Convent, and his Clerk be inſtituted and inducted; *quære* how this Wrong may be after redreſſed and reformed. See 22 *H.* 6. 25, *&c.* D

20 Eliz. 11. Hare's Caſe, he ought to be inducted.

If a Man have a Chapel or Chantry which is donative by Letters Patent, and he (*a*) once preſent unto the Ordinary his Clerk to the Chantry, he ſhall never after collate, but ought to preſent unto the Biſhop; and if he do not preſent within ſix Months, the Ordinary ſhall have Advantage of the Lapſe. See 22 *H.* 6. 26, *&c.* E

A Preſentment made by a Stranger unto an Advowſon which is appropriated unto an Abbey, be the Preſentment in the Time of Vacation, or in the Time of the Abbot, is void, although that the Clerk be inſtituted and inducted: But if the Abbot himſelf preſent unto the (*b*) Biſhop his Clerk to an Advowſon which is appropriate to his Houſe, this Preſentment doth diſappropriate the Advowſon, and make it preſentable after; and if he do not preſent within ſix Months after every Avoidance, the Biſhop ſhall preſent for Lapſe. The Biſhop ought to preſent his Clerk for whom it is firſt found by a *Jure Patronatus.* See 34 *H.* 6. 39. F G

Poſt. 48. H.

1 H. 7. 9. 12 & 13 Ed.

The Biſhop ſhall have the Advantage to preſent by Lapſe, where the Church doth become void by Reſignation or Deprivation, without giving H

(*a*) It is otherwiſe if a Stranger does it alone. 22 *H.* 6. 25, 26. *Vide poſt.* 42.

(*b*) So that it ſeems the Preſentment without Inſtitution, *&c.* is a Diſappropriation. 11 *H.* 6. 32, 33. 22 *H.* 6. 28. See *Plowd.* 500, 501. *Bro. Quare impedit* 38, 111. 38 *H.* 6. 39.

(*a*) Notice thereof to the Patron. See 5 *Ed.* 4. 9. 1 *H.* 7. 9. *Bro. Notice*, &c.

Dyer 293. e. 237.

I Where the Biſhop doth refuſe the Clerk of the Patron for Non-ability, or for Crime, he ought for to give (*a*) Notice thereof to the Patron, otherwiſe he ſhall not preſent for Lapſe; but after the ſix Months paſt, the Patron ſhall have a Writ to the Biſhop, if the Church do remain void, and the Biſhop hath not collated thereunto.

Doctor and Student 177. 12 Eliz. Dyer 293.

K The Chancellor of *England* ſhall preſent unto all the King's Churches which are under the Sum of twenty Marks by the Year, which are in the King's Gift, and in the Right of the Crown: But if the King hath them by any other Title, then the Chancellor ſhall not preſent unto them.

See 13 Ed. 4. 3. 11 H. 4. 80. 38 Ed. 3. 3.

L The Death of one Plaintiff, nor the Nonſuit of one Plaintiff, ſhall not abate the Writ, but he ſhall be ſevered.

Co. 10 Part, 134. 38 Ed. 3. 36.

M Where an Infant hath an Advowſon by Deſcent, and the Church voideth, and he who hath Title paramount doth uſurp, and preſent unto the ſame Church, and the ſix Months do paſs; he is remitted by this Uſurpation, and the Infant out of Poſſeſſion, and without Remedy by that Uſurpation.

Co. Lit. 246. a.

N If a Man hath an Advowſon, and the Church doth become void, and two Strangers do ſeverally preſent their Clerks to the Biſhop to that Advowſon; the Patron ſhall have divers *Quare impedits* againſt them, if he will, and ſhall have ſeveral Judgments, and ſhall recover ſeveral Damages for their ſeveral Preſentments and Wrongs done.

O If a Man maketh another his Proctor, to preſent unto all his Advowſons, and to do ſeveral Things for him; if the Proctor preſent, as Proctor unto

17 Ed. 3. 60. Fitz. Quare impedit 68.

(*a*) Nor ſhall Lapſe devolve to the King without Notice. See alſo touching Notice, 7 *Eliz. Dyer* 2. 5 *Ed.* 4. 9. 1 *H.* 7. 9. *Bro. Notice* 6 & 29. and 14 *H.* 7. 21. A Diverſity where the Patron is a Layman, or not. Alſo 15 *H.* 7. A Diverſity where it is of a Matter whereof the Patron may take Notice, or not.

(Sir *M. H.*) *Note*; No Lapſe ſhall be without Notice, although that the Church be declared to be void, for that the Incumbent was *merè Laicus*. *Dyer* 293. *Pickering*'s Caſe, in the Caſe of a Layman. In the Caſe of Death the ſix Months ſhall be computed from the Time of the Death, and where the Patron preſents, and the Biſhop refuſes for Non-ability, the Biſhop ought to give Notice of the ſix Months: Yet if the Patron does not preſent within ſix Months from the Time of the Death, (and in that Caſe, not from the Time of Notice of the Refuſal) the Lapſe ſhall incur. *Dyer* 327. *b.* &c. for the Church of *Haughton*. And ſee there, that Notice ought to be given at the Church-Door, if the Patron cannot be perſonally found. *Dyer* 346. *Baron*'s Caſe. And for the Form of a publick Intimation of Deprivation for not reading the Articles, ſee *Dyer* 369.

(Sir *W. W.*) The Statute 24 *H.* 8. of Reſidence, *cap.* 2. If one has a Benefice with Cure of eight Pounds Value, and takes another, the firſt ſhall be void as if he were dead. Here the Biſhop need not give Notice to the Patron, becauſe it is void by the Statute, by *Dyer* and *Weſton*; which *Brown* denied, and ſaid, That the Notice remained at Common Law, and by the Common Law the Biſhop ſhould give Notice of a Ceſſion where one had a Plurality, &c. 7 *Eliz.* 116.

26 *H.* 8. If any ſpiritual Perſon be certified by the Biſhop into the Exchequer for Nonpayment of Tithes, that *ipſo facto* the Church ſhall be void. Here the Biſhop ſhall not give Notice to the Patron of this Avoidance, becauſe a newer Avoidance is given by the Statute, than was at the Common Law before, by *Dyer* and *Weſton*, 7 *Eliz.* which *Brown* expreſly agreed, (denied) *ut ſupra*.

him, unto an Advowſon unto which he hath Right to preſent in his own Right, that Preſentment ſhall put him out of Poſſeſſion of the Advowſon, and ſhall give the Poſſeſſion to the other.

P In a *Quare impedit* for the King, although the Defendant hath a Writ unto the Biſhop againſt the King, the King may have a new *Quare impedit* againſt him of the ſaid Avoidance, and make other Title.

See 11 Ed. 3. Quare imp. 117.

Q If Prior and Convent ought to chuſe the Abbot, and name him to the Patron, and he to preſent him to the Biſhop, and they chuſe one for Abbot, and name him to the Patron, (*a*) and the Patron doth preſent another to the Biſhop; they may ſue in the ſpiritual Court for Remedy, as it is ſaid, *H.* 11 *Ed.* 3. *Tamen quære*; for it ſeemeth they are enabled to ſue at the Common Law, as well as they are enabled to chuſe and name the Abbot. As the Prior of *Weſtminſter* and the Convent hath Power to ſue their Abbot for an Advowſon. *M.* 20 *Ed.* 3.

40 Ed. 3. 28. per Fortefcue.

If the Diſturber preſent two or three Times within the ſix Months, yet a *Quare impedit* lieth againſt the Diſturber upon the firſt Preſentment, if he purchaſe the Writ within the ſix Months.

[36.]

16 H. 7. 8. per Keble. 39 H. 6. 25.

A Where a Man doth recover in a Writ of Right of Advowſon, he ſhall preſent at the next Avoidance, and ſhall have a *Quare impedit*, without alledging any Preſentment in himſelf or his Anceſtors, but ſhall declare upon the Record, (*b*) or may have a *Scire facias* upon the Recovery. And ſo may his Heir have a *Scire facias* upon that Recovery againſt the Heir of the other Party, at the next Avoidance after the Recovery; but not after, as it ſeemeth.

15 Ed. 2. fol. 174.

B If a Man recover in a *Quare impedit*, he ſhall have a *Scire facias* againſt the Patron and the Incumbent who made Default, if he will ſue Execution of this Recovery (*c*).

C If Coparceners make Partition in the Chancery, or in the Common Pleas, to preſent by Turns, and afterwards a Stranger doth uſurp in their ſeveral Turns; yet after, when their Turns come, every of them may have a *Scire facias* upon this Partition againſt the (*d*) Stranger when his Turn cometh, to ſhew wherefore he ſhould not preſent, notwithſtanding the Uſurpation aforeſaid. But otherwiſe it ſeemeth it is, if the Partition be of Record, then they ſhall be put to their Writ of Right by reaſon of this Uſurpation.

16 H. 7, 8, &c.

(*a*) *Note*; In ſuch Caſe the Profits are to the Prior, and yet the Freehold is in the Abbot. 20 *Ed.* 3. *Non-ability* 9. 14 *H.* 4. 10. adjudged.

(*b*) See 13 *Ed.* 3. *Scire facias* 118. Where the Conuſee of a Fine of an Advowſon brought a *Scire facias* at the next Avoidance againſt the Heir of the Conuſor, and held good without ſhewing any Preſentment.

(*c*) He ſhall have a *Scire facias* againſt the Heir at the next Avoidance. 39 *Ed.* 3. 25. But the Heir ſhall not have a *Scire facias* on a Recovery in a *Quare impedit.* 9 *H.* 6. 57. *a.* becauſe in the *Quare impedit* the Preſentment only is recoverable, and not the Advowſon.

(*d*) Yet ſee the contrary 33 *Ed.* 3. *Quare impedit* 196. which ſeems not to be Law; for there it was brought againſt an Eſtranger, and held, That though by ſuch Uſurpation he put the one Coparcener (whoſe Turn it was) out of Poſſeſſion; yet it did not put the other out of Poſſeſſion. See 43 *Ed.* 3. 15. 22 *Ed.* 4. 9.

If

D If Coparceners make Compoſition to preſent by Turns, (*a*) and a Stranger doth uſurp, and preſenteth in the Turn of one of them, yet if they will they may join in a *Quare impedit* againſt the Stranger, notwithſtanding the Compoſition. And after Compoſition to preſent by Turns, if they do preſent in common, they may well ſo do. But it ſeemeth by that, that the Compoſition is waved; for if Coparceners (where one is within Age) make Compoſition to preſent by Turns, and at full Age they preſent contrary to this Partition, theſe Preſentments ſhall avoid the Partition made before.

E If the eldeſt Son by the firſt Venter preſent, and dieth without Heir, and 3 H. 7. 51.
afterwards the Church becomes void, the younger by the ſecond Venter ſhall
not preſent, nor have this Advowſon. But *Devon* ſaith, If a Man hath two 10 Ed. 3. 53.
Daughters by divers Venters, and they enter, and make Partition to preſent 10 Aſſ. 17.
by Turns, and one dieth without Heir, the other Siſter ſhall be her Heir:
Which was granted. But after the Partition, if one Siſter hath preſented, and
afterwards dieth without Heir, it ſeemeth her Siſter of the Half-Blood ſhall
not be Heir unto her.

F (*b*) If a Man be diſſeiſed of a Manor unto which an Advowſon is appendant, and the Diſſeiſor ſuffer an Uſurpation by a Stranger unto the Advowſon, and afterwards the Diſſeiſee doth re-enter into the Manor; he ſhall preſent unto the Advowſon when it doth become void, notwithſtanding ſuch Uſurpation.

Spoliation.

G THERE is a Manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church itſelf, which is to be ſued in the ſpiritual Court, and not in the temporal Court; and therefore there is no Writ thereof in the Regiſter. But it is good to be known what Perſon ſhall have that Suit, and againſt what Perſon it will lie, and for what Thing he ſhall ſue, and when he ſhall ſue, and in what Court.

H *Spoliation* properly lieth for an Incumbent againſt another Incumbent, where 38 H. 6. 20.
the Right of the Patronage doth not come in Debate: As if a Parſon be Forteſcue.
created Biſhop, and hath a Diſpenſation to hold (*c*) his Rectory, and afterwards the Patron doth preſent another Incumbent, who is inſtituted and inducted; now the Biſhop ſhall have a Spoliation againſt that Incumbent in the
ſpiritual Court, becauſe he claimeth by one Patron, and the Right of the Pa- 26 H. 8. 3.
tronage doth not come in Debate.

And ſo if a Parſon do accept of another Benefice, for which the Patron 38 H. 6. 20.
preſents another Clerk, who is inſtituted and inducted; now one of them may ſue a *Spoliation* againſt the other, and then it ſhall come in Debate, whether

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(*a*) *Note*; They may wave the Partition of the Advowſon and the Allotment thereon, and preſent by a new Partition. 21 *Ed.* 3. 31. 13 *Ed.* 3. *Quare impedit* 58. 33 *Ed.* 3. *Quare impedit* 196, by *Skipw.*

(*b*) See 24 *H.* 6. 16. 33 *H.* 3. 33. 3 *H.* 4. 7, 8. See alſo 8 *H.* 6. 17. *a.* 14 *H.* 6. 15. And ſo it is if a Diſſeiſor has preſented.

(*c*) *Scil.* By Force of his former Title, and not *in Commendam.*

26 H. 8. 3. he hath Plurality or not. But if a Patron do preſent a Clerk unto an Advowſon, who is inſtituted and inducted, and afterwards another Man doth preſent another Clerk to the ſame Advowſon, who is alſo inſtituted and inducted; there one of them ſhall not have a *Spoliation* againſt the other, if See after 51. 1. he diſturb him of the Church, or to take the Fruits thereof, becauſe the Right of the Patronage doth come in Debate in the ſpiritual Court, which of the Patrons hath a Right for to preſent: And therefore in that Caſe, if one of them ſue a *Spoliation* againſt the other, he ſhall have a Prohibition unto the ſpiritual Court, and no Conſultation ſhall be granted for the Cauſe before ſaid.

I And if one Clerk, without any Preſentation, Inſtitution or Induction, do Poſt. 37. C. caſt another Perſon out of his Rectory, and taketh the Profits thereof, the Parſon ſhall not have a *Spoliation* againſt him, but an Action of Treſpaſs; or 38 H. 6. 19. Markham. 26 H. 8. 3. 22 H. 6. 27. an Aſſiſe of *Novel Diſſeiſin*; for *Spoliation* doth not lie, if not againſt him who cometh to the Poſſeſſion of a Benefice, or unto the Fruits thereof, by the Courſe of the ſpiritual Law, *ſcil.* by Inſtitution, *&c.* ſo that he have Colour to have it, and to be Parſon by the ſpiritual Law.

K So if a Prebend happen void, and the Biſhop collate thereunto, and before Induction the Biſhop die, and the Temporalties come unto the King, and afterwards he is inducted, and afterwards the King giveth the ſame by his Letters Patent unto another Clerk, who is inſtituted and inducted; the firſt Clerk ſhall have a *Spoliation* in the ſpiritual Court againſt the Preſentee of the King, becauſe the King ought to have removed him by *Quare impedit*, and not to have collated as he did. And there the Patronage doth come in Debate.

[37.] M. 44 Ed. 3. 33. Quare impedit 4. A If an Abbot have a Manor into which an Advowſon is appendant in Fee, and he doth appropriate the Advowſon to him and his Succeſſors, and afterwards leaſeth the Manor for one thouſand Years, and alſo the Advowſon, and the Leſſee makes an Union of the Parſonage and the Vicarage, and preſents the Vicar unto the Ordinary as Parſon, *&c.* by reaſon whereof the Abbot ſueth a *Spoliation* againſt the Vicar, and the Vicar ſueth a Prohibition; the Abbot ſhall not have a Conſultation upon the Matter ſhewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this Caſe; for that the Right of the Patronage doth not come in Debate.

38 H. 6. 19, 20, 28. B And ſo if an Abbot be Parſon imparſonee, and a Stranger preſent his Clerk to that Advowſon, who is inſtituted and inducted; the Abbot ſhall not have a *Spoliation* againſt the Clerk, but an Action of Treſpaſs or Aſſiſe, if he be ouſted; becauſe the Right of the Parſonage is to be tried.

C And if a Clerk obtain a Benefice by Proviſion, for which Cauſe the King is to have the Preſentment for that Time, becauſe the very Patron did not preſent within the Time limited him by the Statute of 25 *Ed.* 3. and the King preſents to the Church his Clerk to the Ordinary; who is inſtituted, and before Induction takes the Profits; he who is in by Proviſion ſhall not have a *Spoliation* againſt him, becauſe he doth not come to the Poſſeſſion of the Church by the ſpiritual Law, but as an Intruder and Treſpaſſer. But if the Preſentee of the King were inducted, then there is no Remedy for him who hath the Benefice by Proviſion.

D A Clerk had a Collation by the King unto a Chapel, and was put into Poſſeſſion by the Sheriff, and afterwards the Clerk was ouſted by a Prior, *&c.* in that Caſe he ſhall not have a *Spoliation*, but an Aſſiſe or Treſpaſs, *&c.*

E But it appeareth by the Regiſter, that one Parſon ſhall have a *Spoliation* againſt another Parſon, which have divers Patrons, *&c.* if he be ſpoiled of any Tithes or Profits appertaining to his Church, which do not amount to the fourth Part of the Value of the Church, as before is ſaid. But if they do amount unto the fourth Part of the Church, then one Parſon ſhall not have a *Spoliation* againſt another Parſon, if they claim not of one Patronage, ſo that the Title of the Patronage doth not come in Debate; and then he ſhall have a *Spoliation*; and if the other ſue a Prohibition, *&c.* he ſhall have a Conſultation.

Ne admittas.

F THIS Writ of *Ne admittas* lieth for the Plaintiff in a *Quare impedit:* And the ſame is where one hath an Action (*a*) depending in the Common Pleas of *Darrein Preſentment*, or of *Quare impedit*, and he ſuppoſeth that the Biſhop will admit the Clerk of the Defendant pendent the Plea betwixt them; and he may ſue this Writ directed to the Biſhop. And this Writ ought to be ſued within the ſix Months after the Avoidance; for after the ſix Months he ſhall not have this Writ, becauſe that then the Biſhop may preſent for Lapſe; and therefore it is in vain then for to ſue this Writ, becauſe that the Title to preſent is then devolved unto the Biſhop: But the King may ſue this Writ after the ſix Months, where he hath a *Quare impedit* depending, or Aſſiſe *de Darrein Preſentment*, becauſe that *no Time runs againſt the King.*

33 Ed. 3. Quare impedit 194. Note; In Marrow's Reading it is holden, that the ſix Months ſhall not be accounted by 28 Days, but according to the Calendar Months.

But there is a Rule in the Regiſter, thus; *It is to be noted, when the King preſents in Right of his Crown, then Time runs againſt him.* But that is not Law at this Day.

And the Writ of *Ne admittas* for the King is ſuch:

G *The King to the worſhipful Father in Chriſt* W. *by the ſame Grace Biſhop of* Wincheſter, *greeting: We prohibit you, that you admit not a Parſon to the Church of* I. *which is void, as it is ſaid, and touching the Advowſon* whereof *a Suit is moved in our Court between us and* A. or thus; *between* A. *and* B. *until it ſhall have been diſcuſſed in the ſame Court, whether the Advowſon of the ſame*

(*a*) In *Darrein Preſentment* the Plaintiff recovered, and the Defendant brought a Writ of Error, and prayed a *Ne admittas* to the Biſhop: But it was not granted. 17 *Ed.* 3. 5.

Note; In a *Quare impedit* the Caſe was, *A.* preſented to the Archdeacon of *Richmond*, who is the Ordinary there, and *B.* procured a *Ne admittas* to the Archdeacon, and eſpecially to the Biſhop, who is his Superior; after which the Biſhop prayed *A.* to appeal to him, who does ſo accordingly; and he inquires by a *Jure Patronatus*, and finds *A.* to be Patron, and thereupon admits his Clerk. And it ſeemed, 1. That the *Ne admittas* had made the Archdeacon a Diſturber, if he had admitted, notwithſtanding the *Jure Patronatus* found for *A.* 2 That the *Ne admittas* to the Biſhop before the Appeal is nothing to the Purpoſe. 3. That the Requeſt to the Party by the Biſhop to appeal to him made him a Diſturber, (*quære hoc*) notwithſtanding the Finding in the *Jure Patronatus.*

Church belongs to us or to the aforeſaid A. Or thus; *In the ſame Court to which of them the Advowſon of the ſame Church belongs:* Or thus; *Between us by reaſon of the Abbacy of* S. *being vacant and in our Hands, and* H. *Biſhop of* Lincoln, *until it ſhall have been diſcuſſed in our ſame Court, whether the Advowſon of the ſame Church belongs to us by reaſon of the Vacancy aforeſaid, or to the aforeſaid Biſhop.*

21 H. 6. 45. And it ſeemeth that the Defendant may ſue this Writ as well as the Plaintiff, H
if the Defendant do ſuppoſe that the Biſhop will admit the Clerk of the Plaintiff pendent the Writ. And this Writ of *Ne admittas* doth not lie, if the
2 Ed. 4. 11. Plea be not depending in the King's Court by *Quare impedit*, or Aſſiſe of *Darrein Preſentment*. And therefore there is a Writ in the Regiſter directed unto the Chief Juſtice of the Common Pleas, to certify the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt ſuch and ſuch Perſons, *&c.* And therefore it ſeemeth the Writ of *Ne admittas* ſhall not be granted before the King be certified in the Chancery, that ſuch Pleas of *Quare impedit* or *Darrein Preſentment* be there depending in the Common Pleas. But yet the Writ of *Ne admittas* may be granted out of the Chancery directed unto the Biſhop, that he do not admit, *&c.* before the King be certified in the Chancery, that ſuch Plea of *Quare impedit* or *Darrein Preſentment* is depending in the Common Pleas, then the Party grieved may require the Chief Juſtice to certify the King in his Chancery, that no ſuch Plea is depending there, and thereupon the Party grieved ſhall have ſuch Writ:

[38.] *The King to the worſhipful Father in Chriſt,* &c. *Although by our Writ we have prohibited you, that you ſhould not admit a Parſon to the Church of* I. (as in the Writ of *Ne admittas) neverthleſs, becauſe it appears to us by the Certificate of our beloved,* &c. I. *of* S. *that no Plea is depending in our Court before him and his Companions our Juſtices of the Bench, between us and the beforementioned* W. *touching the Advowſon aforeſaid; We command you, that you freely execute that which you ſhall know to appertain to your Office in this Matter, our Prohibition aforeſaid notwithſtanding. Witneſs,* &c.

And when the Biſhop himſelf is Party and Diſturber, then the Form of the A
Writ of *Ne admittas* is as aforeſaid: *We prohibit you that you admit not.* Yet the Form of the Writ uſed to be, *We prohibit you, that you collate not a Clerk to the Church,* &c. *which is void,* &c.

Breve Epiſcopo ad admittendum Clericum *.

B IF a Man do recover his Preſentation in the Common Pleas againſt the Biſhop, then he may have a Writ to the ſame Biſhop to admit his Clerk, or unto the Metropolitan; and the Writ ſhall be ſuch:

The King to the worſhipful Father in Chriſt, &c. *Whereas the Prior of* I. *&c. in our Court hath recovered againſt us his Preſentation to the Vicarage of* W. *We command you, that you admit a fit Perſon to the Vicarage aforeſaid upon the Preſentation of him the ſaid Prior*, &c.

7 H. 8. 32. 8 H. 4. 22. A Writ ſhall iſſue to the Metropolitan, if the Biſhop be Party. *Quære*, for the Biſhop did diſclaim as Patron in 8 H. 4.

C And if a Man recover againſt another than the Biſhop, then the Writ which ſhall be made to the Biſhop, ſhall be thus:

The King, &c. *Whereas the Prior of*, &c. *in our Court*, &c. *hath recovered againſt* I. P. *&c. We command you, that notwithſtanding the Re-claim of the aforeſaid* I. P. *you admit a fit Perſon upon the Preſentation of the aforeſaid Prior*, &c. And upon that he ſhall have an *Alias* and a *Pluries*, if the Biſhop do not execute the Writ, and an Attachment againſt the Biſhop, if need be.

In a Quare impedit the Defendant diſclaims, there the Plaintiff ſhall have a Writ to the Biſhop: *Contra* in Diſclaimer in a Writ of Right of Advowſon. 6 Ed. 3. 7. Error 78. The Reaſon is, becauſe he cannot remove his Clerk after the ſix Months paſt.

D But if the King do recover in the Common Pleas any Prebendary, or Subdeanery, or Dignity againſt the Biſhop, and giveth the ſame by his Letters Patent unto another Clerk; the Clerk ſhall ſhew the Letters Patent in the Common Pleas, and thereupon ſhall have a Writ unto the Biſhop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the ſame by other Letters Patent unto another Clerk; that Clerk ſhall have a Writ out of the Chancery directed unto the Juſtices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the ſame to this Clerk by his Letters Patent, commanding the Juſtices that they ſend another Writ to the Biſhop, that he admit this Clerk, notwithſtanding the King's Collation before made unto the other Clerk.

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* (*W. W.*) If one pleads in Abatement of the Writ, and does not make Title, he ſhall not have a Writ to the Biſhop, *&c.* held by the Juſtices, 43 *Ed.* 3. 25.

(*M. H.*) *Note*; This Writ is expreſsly judicial, and therefore ſhall iſſue out of the Place where the Record is; if Judgment be given at the *Niſi prius*, the Juſtices of *Niſi prius* ſhall award the Writ to the Biſhop: (Yet it ſeems this Writ is not returnable.) And when it appears, that the Record is ſent into *B. C.* it ſhall iſſue from thence. *Dyer* 194.

Note; In a *Quare impedit* againſt the Archbiſhop of *York*, if he be found a Diſturber, the Writ ſhall iſſue to the Archbiſhop of *Canterbury* to admit the Clerk; *per Cur'*. *Dyer* 327, 328. See *Dyer* 76, 77. 19 *Ed.* 3. *Quare impedit* 153.

11 H. 4. 71. Hank. and Hill. 21 Ed. 4 3.

(*a*) In a *Quare impedit* betwixt two Strangers, if there doth appear to the Court a Title for the King, they ſhall award a Writ unto the Biſhop for the King. E

14 H. 4. 11. Hankford. 31 H. 6. 15. *contra* where there is Fault in the Count.

(*b*) If a Man do recover an Advowſon, and the ſix Months paſs, yet if the Church be void, the Patron may pray a Writ unto the Biſhop, and ſhall have it; and if the Church be void when the Writ cometh to the Biſhop, (*c*) the Biſhop is bound to admit his Clerk. And in Reaſon the ſame Law is, if the Patron after the ſix Months preſent unto the Biſhop, if the Church be then void, the Biſhop is bound to admit his Clerk. F

(*d*) And a *Quare impedit* ſhall be ſued againſt a Sub-Prior, *&c.* for Diſturbance of the Patron. *Trin.* 31 *Ed.* 1. G

(*e*) Where the Writ abateth for Form or falſe *Latin*, the Defendant ſhall not have a Writ to the Biſhop. If the Patron who is Defendant make Default at the Diſtreſs, and the Incumbent abate the Writ by Plea, a Writ unto the Biſhop ſhall not be awarded for the Patron, becauſe he made Default. H

7 H. 6. 15. per Curiam, *econtra*, if the Patron had appeared, and the Incumbent made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Biſhop.

10 H. 6. 4. f.

(*f*) In a *Quare impedit* againſt the Biſhop and others, all made Default but the Biſhop, and the Plaintiff had not a Writ unto the Biſhop againſt the others, until he had counted againſt the Biſhop. I

(*g*) If the Plaintiff be Nonſuit, the Defendant ſhall not have a Writ unto the Biſhop before he hath made Title to the Advowſon. K

33 H. 6. 1. 22 H. 6. 44. 1 H. 7. 13. 31 H. 6. 14. 38 H. 6. 14. 34 H. 6. 44. 11 H. 6. 8. Note; And there the Writ was brought by two Coparceners againſt the third, and others.

(*h*) Where the Defendant claimeth the Advowſon as Parſon imparſonee, although it be found for the Defendant, he ſhall not have a Writ to the Biſhop. L

Wint. 9 H. 6. 16. per Cur'; the Plaintiff ſhall have a Writ to the Biſhop upon inſufficient Plea. 21 H. 6. 36. Aid. 33 H. 6. 1.

(*a*) See accordant 21 *Ed.* 4. 3. *b. per Choke.* 11 *H.* 4. 71. *per Hankſ.* and ſo it ſhall iſſue, if it be found againſt the King in a *Quare impedit*; and yet if the Right appears for the King on a ſpecial Verdict, he ſhall not have a Writ to the Biſhop. *Rex verſus Epiſc' Roſſen'.* See 4 *Eliz.* 243. 16 *H.* 7. 12. F. *Brief al Eveſque* 13. *Bro.* 86. 44 *Ed.* 3. 10. *Stamf.* 95. *a.*

Note; On this Writ there lies an *Alias, Pluries* and *Attachment*, and thereon the Parties ſhall plead, as in a *Non admiſit.* *Q.* 121.

(*b*) *Ante* B. and 35. 11 *H.* 4. 80.

(*c*) *Doctor and Student* 125. 13 *Ed.* 4. 3.

(*d*) 14 *H.* 4. 11.

(*e*) *Vide* M. *infra*, and 13 *H.* 4. 7.

(*f*) *Vide* 10 *H:* 6. 4. 11 *H.* 6. 8. 22 *H.* 6. 44. 26 *H.* 6.

(*g*) See 2 *H.* 6. 5. 26 *H.* 6. *&* *infra* N.

(*h*) See a Writ to the Biſhop by the Defendant, where the Plaintiff had diſcontinued his Suit, as if he be eſſoined, where he had an Attorney, *&c.* 14 *H.* 4. 12. The Writ went to the Biſhop on a Title made where the Writ abated. 9 *H.* 5. 11. If the Defendant ſays he has (no) Title to the Church within the ſame Biſhoprick, he may have a Writ to the Biſhop. *Quære* 8 *H.* 6. 37. 9 *H.* 6. 17. A Writ went to the Biſhop on a Title made for the Defendant, where the Writ abated. 11 *H.* 6. 53. 31 *H.* 6. 25.

M (*a*) Where the Writ abateth for *Miſnomer*, or for Inſufficiency, the Defendant ſhall not have a Writ to the Biſhop.

N (*b*) If the Defendant do not appear at the Diſtreſs returned againſt him, the Plaintiff ſhall have a Writ to the Biſhop without (*c*) making Title. *Vide ſupra* K.

O If the Sheriff return upon a *Quare impedit*, *That the Plaintiff hath not found Pledges*, then the Plaintiff may find Pledges in the Common Pleas, and ſhall have a new *Quare impedit* in the Common Pleas; and if the Sheriff return upon that Writ *tarde*, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant ſhall not have a Writ to the Biſhop, becauſe that no Writ is ſerved againſt the Defendant. 2 H. 5. 3.

P Where the Plaintiff recovereth by Verdict in a *Quare impedit*, and it is found by the ſame Verdict that the ſix Months are paſt, and that the Metropolitan hath preſented, whereas the Ordinary ought to have preſented, *&c.* and that the Year is now paſt, *&c.* yet the Plaintiff ſhall have a Writ to the Biſhop. See 38 *Ed.* 3. 12. 11 H. 4. 80.

Q If a Man recover againſt a Biſhop, he may have a Writ to the ſame (*d*) Biſhop, or unto his Vicar General, if he be out of the Realm, or unto the Metropolitan. 7 H. 4. 37.

R A Man ſued divers *Quare impedits* againſt the Biſhop, and he was Nonſuit in all but one Writ; the Defendant had not a Writ to the Biſhop until that Writ was determined. 12 R. 2.

S (*e*) In a *Quare impedit* the Defendant pleaded to Iſſue, and after made Default, and a Writ was awarded unto the Biſhop for the Plaintiff. 2 H. 4. 1.

T (*e*) At the *Diſtringas* returned againſt the Defendant, he comes, and hath Day by the Prayer of the Parties, and afterwards makes Default; the Plaintiff ſhall not have a Writ to the Biſhop, but a new *Diſtringas*. *Vide ſupra* N. [39.]

(*a*) *Vide ſupra* H. 21 *H.* 6. 56. 11 *H.* 6. 3. Where it ſhall abate for falſe *Latin*, ſee 14 *H.* 4. 11. 3 *H.* 6 3. 13 *H.* 6. 15.

(*b*) *Vide ſupra* H. 21 *H.* 6. 56. 11 *H.* 6. 3. 27 *H.* 6 12.

But if he appears at the Grand Diſtreſs, and after makes Default, a *Diſtringas* ſhall iſſue, and then a Writ to the Biſhop. 13 *Ed.* 3. *Brief at Eveſque* 19. and although *Nihil* be returned on every Part of the Proceſs, *viz.* on the Summons, Attachment and Diſtreſs, yet the Plaintiff ſhall have a Writ to the Biſhop. 12 *H.* 4. 4. 21 *H.* 6. 56. 11 *H.* 6. 3.

(*c*) And ſo have a Writ of Inquiry of Damages. 24 *Ed.* 3. 37. yet ſee 12 *H.* 4. where no Writ ſhall iſſue.

(*d*) See 16 *Ed.* 3. *Quare non admiſit* 3. But if he has once a Writ to the Metropolitan, he ſhall not afterwards reſort to have a Writ to the Biſhop, or to the Biſhop's Vicar, if he be out of the Realm. 38 *Ed.* 3. 12. But in that Caſe he has a *Sicut alias* to the Metropolitan, and yet *Note*; the Biſhop was never found a Diſturber.

See 38 *Ed.* 3. 22. The Metropolitan returned, that it was out of his Juriſdiction, and now the Plaintiff prayed a Writ to the Vicar of the Biſhop, for that he was out of the Realm, and could not have it, becauſe it did not ſo appear by the Certificate.

(*e*) *Note*; The Defendant came at the Grand Diſtreſs, and pleaded to the Inqueſt. *Contra*, where he comes not at the *Pone per vadios*, *&c.* 16 *Ed.* 3. *Brief al Eveſque* 18. See 8 *Ed.* 2. *Quare impedit* 168. 16 *Ed.* 3. *pl.* 17. 13 *Ed.* 3. *pl.* 19. *Brief al Eveſque* 19. See 2 *H.* 4. 1. accordant to the Diverſity.

A (*a*) In a *Quare impedit* the Defendant maketh Title for himſelf and others, and afterwards the Plaintiff is Nonſuit; a Writ to the Biſhop ſhall be awarded for the Defendant only, and not for the others.

14 H. 7. 19. and 7 H. 6. 15. B (*b*) At the Diſtreſs returned againſt two, one appeareth, and the other maketh Default; the Plaintiff ſhall have a Writ to the Biſhop (*c*) againſt him who made Default; and yet it may be, that the other Defendant may bar the Plaintiff; and it is ſo uſed at this Day: But the contrary was adjudged, *H. 7 Ed.* 3. for the Cauſe before ſaid.

C 13 Ed. 3. pl. 20. In a *Darrein Preſentment* betwixt two Strangers, the Aſſiſe found a Title for another Stranger; who was not Party to the Writ; he ſhall have a Writ (*d*) awarded to the Biſhop for him, although he were not Party to the Writ, becauſe that the Writ is, *What Patron preſented laſt*, &c.

10 Ed. 3. 19. D Where a Man hath a *Quare impedit* againſt one, and the Defendant hath a *Darrein Preſentment* againſt the Plaintiff, and recovereth in the *Darrein Preſentment*, and the Plaintiff is Nonſuit in the *Quare impedit*, the Defendant ſhall have two Judgments againſt the Plaintiff, to have a Writ unto the Biſhop in both Actions; and two Writs ſhall be awarded to inquire of the Damages; but he ſhall not render double Damages for one Diſturbance.

E When a Man ſueth a *Quare impedit* againſt another, and after pendent the Suit he ſueth *Ne admittas* to the Biſhop, *&c.* and afterwards they agree to preſent in common by Turns to that Advowſon; then he ſhall have a ſpecial Writ out of the Chancery unto the Biſhop, to admit him who ought, by the Accord and Compoſition, to preſent at the firſt Turn to that Avoidance. But firſt the King ought to ſend a *Certiorari* unto the Juſtices of the Common Pleas, to certify in the Chancery of the Accord there; and upon that Certificate the King ſhall ſend his Writ unto the Biſhop to admit his Clerk, who by the Accord ought to have the firſt Preſentment and Turn. And the Form of the Writ in the Regiſter is ſuch:

F *The King to the Worſhipful*, &c. *Whereas by our Writ we lately prohibited you, that you ſhould not admit a Parſon*, &c. *of the ſame third Part of the Advowſon, and afterwards at the Proſecution of them the ſaid* E. *and* M. *ſuggeſting to us, that it was agreed between them in this Manner, that the aforeſaid* E. *ſhould preſent his Clerk to the ſaid third Part for this Turn, and the aforeſaid* M. *upon*

(*a*) See 13 *Ed.* 3. *Brief al Eveſque* 25. accordant. See alſo for this 11 *H.* 6. 8. *A. B.* and *C.* Parceners brought a *Quare impedit* againſt *C.* who ſevered, and afterwards *A.* and *B.* were nonſuited; *C.* ſhall not have a Writ to the Biſhop without Title ſhewn, and yet on the Title ſhewn, the Title would appear for the Plaintiff. See 13 *Ed.* 3. *pl.* 20 and 25.

(*b*) See 13 *Ed.* 3. *pl.* 21, and *ante.*

(*c*) See accordant 13 *Ed.* 3. *Brief al Eveſque* 21. *Lib. Entry. Quare impedit* in *Judgment* 4. *fol.* 507. But a *Ceſſet executio quoad Breve, &c. quouſque. Vide contra* 7 *Ed.* 3. 4. (Expreſsly) in a Writ againſt the Biſhop and others: Where the Biſhop diſclaims, the Plaintiff ſhall have a Writ to the Biſhop; *ſed ceſſet executio quouſque placitum, &c.* See 17 *Ed.* 3. *Brev. al Eveſque* 58. If the King brings a *Quare impedit* againſt *B.* and another *Quare impedit* againſt *B.* and *C.* and *B.* comes in, *& non poteſt dedicere,* the firſt Writ to the Biſhop ſhall proceed for the King notwithſtanding; for it is an Original.

(*d*) See accordant *Bracton* 248. where the Aſſiſe is taken *per modum Aſſiſæ*, and not *per modum Juratæ*. See alſo accordant 13 *Ed.* 3. *Brev. al Eveſque* 20. by *Aldr.* and 17 *Ed.* 3. 22. by *Wilby.*

the next Avoidance ſhall preſent his Clerk, as by certain Writings indented, made between them, and ſealed with their Seals, and ſhewn before us in our Chancery, fully appears; and that they have ſued unto you, earneſtly praying that you, in whoſe Power it is, would admit the Clerk of him the ſaid E. *for this Turn, to the ſaid third Part; nevertheleſs that you, aſſerting that your Hands are tied up by Pretence of our ſaid Prohibition, have refuſed to admit the Clerk of him the ſaid* E. *And they beſeeching us that we would cauſe to be provided for them a fit and appoſite Remedy in this Behalf, that the Collation of the aforeſaid third Part for this Turn may not devolve to you by Lapſe of Time, which nearly approaches, as it is ſaid; We commanded our beloved and faithſul* R. *of* N. *that he ſhould thereupon certify to us in our Chancery, under his Seal, diſtinctly and openly, the Cognizances which the before-mentioned* E. *and* M. *willingly made before him,* viz. *whether they had agreed upon the Right of preſenting to the third Part in Manner aforeſaid, and if the ſaid* M. *was willing that the Clerk preſented by him the ſaid* E. *to the ſame third Part ſhould, for this Turn, be admitted and received to the ſame, and if the ſaid Writings be the Deeds of them the ſaid* E. *and* M. *And becauſe the before-mentioned* R. *at our Command, hath certified that it is agreed between the before-mentioned* E. *and* M. *that the aforeſaid* E. *for this preſent Avoidance, ſhall preſent his Clerk to the ſaid third Part, and the aforeſaid* M. *at the next Avoidance following, and ſo the aforeſaid* E. *and* M. *and their Heirs, ſhall alternately for ever preſent to the aforeſaid third Part; and that the ſaid Agreement might be firmly obſerved, the aforeſaid Writings were made between the Parties aforeſaid: We command you, that you admit a fit Perſon to the third Part aforeſaid upon the Preſentation of the before-mentioned* E. *for this Turn, and that you further execute what belongs to your Office in this Behalf (notwithſtanding our Prohibition aforeſaid). Witneſs,* &c.

G (*a*) By this Writ it ſeemeth a Man ſhall have a *Quare impedit quod permittat ipſum præſentare ad tertiam partem Eccleſiæ*; and it ſeemeth to ſtand with Reaſon; for a Conſolidation may be made of three Advowſons, and every Patron to preſent by Turn, and then every one hath Right but to a third Part. 40 Ed. 3. 28. 50 Ed. 3. 26. 31 H. 6. 24.

Prohibition and Inhibition.

H THERE are divers Manners of Prohibitions and Inhibitions, and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Regiſter is, where a Man ſueth a *Præcipe in Capite* againſt another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are ſo holden may ſue this Writ directed to the Juſtices of the Common Pleas, commanding them, that if it do appear unto them that the See poſt. Conſultation.

(*a*) See the Writ in caſe of a Conſolidation, where each Party has preſented by Turns; *Quod permittat eum præſentare ad Eccleſiam, Dyer* 259 and 78. *Note*; It is there held, that in this Caſe they are not Moieties, but each has the Intirety in his Turn. But it is otherwiſe of a Compoſition between Parceners. 5 *Co.* 102. *Windſor*'s Caſe.

Lands are not holden of the King, *&c.* but immediately of another, that they do not (*a*) meddle with the Conuſance of that Plea, but that they bid the Party ſue his Writ of Right Patent, *If it ſhall ſeem expedient to him.* And in a Writ of Right, if the Tenant vouch a Foreigner to Warranty, the Tenant [40.] ſhall have a Writ of *Superſedeas* directed to the Bailiffs of the ſame Court, to ſurceaſe the Plea, until the Warranty be determined; and if the Bailiffs will not ſurceaſe for that Writ, then the Tenant ſhall have another Writ of Inhibition directed unto the Sheriff, that he go unto the ſaid Court; and to inhibit the Bailiffs, that they do not proceed in the Plea until the Warranty be determined, *&c.* And if they will not ſurceaſe for that Writ, then the Tenant ſhall have Attachment againſt the Bailiffs directed unto the Sheriff, returnable in the Common Pleas or King's Bench.

A A Prohibition may be directed unto the Sheriff at the Suit of the Tenant, that he do not hold Plea in a Writ of Right, unleſs Battel ſhall be thereupon waged, becauſe that the Tenant hath put himſelf upon the Grand Aſſiſe.

B And a Man may have a Writ of Prohibition directed unto the Sheriff, to go unto the Lord's Court, and to inhibit the Bailiffs, that they do not hold Plea in the Lord's Court of a Houſe, *&c. between* A. *Demandant, and* B. *Tenant.* And he may have another Writ unto the Sheriff, to prohibit the Lord himſelf, that he do not hold the Plea, *&c.*

C And alſo the Tenant may have another Prohibition directed to the Sheriff, to prohibit the Bailiffs of the Biſhoprick of the Hundred of *F.* that they do not hold Plea in the ſaid Hundred *between* A. *Demandant, and* B. *Tenant, of Cuſtoms and Services which the ſame* A. *requires of him for his free Tenement, which he holds of him in* I. *unleſs Battel ſhall thereupon be waged*; becauſe the ſaid *B.* hath put himſelf upon the Grand Aſſiſe, *&c.* And if Tenant by Receit ſue ſuch a Prohibition, the Writ ought to make Mention of the Receit.

See Articuli Cleri 83.

D Where the Biſhop holdeth Plea of an Advowſon, or of the fourth Part, or of the third Part thereof, then the Party ſhall have a Writ of Prohibition directed unto the Biſhop himſelf, in this Form:

The King to the worſhipful Father in Chriſt A. *by the ſame Grace Biſhop of* Wincheſter, *and his Officials and their Commiſſaries, greeting: We prohibit you, that you do not hold Plea in the Court Chriſtian of the Advowſon of the Church of* N. *or of the Moiety, or of the third Part, or of the fourth Part of the Church of* N. *whereof* S. *and* T. *complain, that* R. *draweth them into Plea before you,* &c. And he may have a Prohibition to the (*b*) Party himſelf, *Ne ſequatur*, by theſe Words; *We prohibit you, that you purſue not the Plea in the Court Chriſtian of the Advowſon,* &c. *whereof* C. *complains, that you draw him into*

(*a*) Where a Prohibition ſhall be in caſe of an incident Plea, if the Property of Goods comes in Debate on a Plea for a Legacy, Mortuary, *&c.* as if a Legacy be deviſed to the Heir of *I S.* ſo that it comes in Debate who is Heir of *I. S.* yet a Prohibition does not lie. *Contra*, if in a Suit for Tithes the Bounds of a Pariſh comes in Debate. *Kelw.* 110.

(*b*) *Note*; If the Suit be prohibited by Law, and without Writ, or if by Writ, and not by Law, yet, though he ſues before Attachment, a Prohibition lies. 33 *Ed.* 3. *Attachment* 14. 8 *R.* 2. *ibid.* 150. See the Writ *Contra pacem*, 31 *Ed.* 3. *Attachment*, *Sur Prohibition* 8.

that Court, &c. And he may have an Attachment thereupon againſt him, if he follow it after the Writ cometh unto him.

E And the King for himſelf may ſue forth this Writ, although the Plea in the Spiritual Court be betwixt two common Perſons, becauſe the Suit is in Derogation of his Crown.

F And the King may ſue an Attachment upon the ſame, if they do proceed, *&c.* And in the Time of Vacation of a Biſhoprick, the Prohibition ſhall be directed unto the Guardian of the Spiritualties, *and to his Official and Commiſſaries.*

G And a Prohibition lieth for Chantries, Chapels, Prebends and Vicarages, *&c.*

H (*a*) If a Man ſueth another in the Spiritual Court for a Chattel or Debt, the Defendant ſhall have a Prohibition, and the Writ ſhall be, *We prohibit you, that you do not hold Plea in the Court Chriſtian of Chattels or Debts*, &c. And he may have a Writ unto the Party himſelf, that he ſhall not ſue there, *&c.* and ſhall have an Attachment thereupon, if they ſue there afterwards, *&c.* And alſo the King may ſue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it.

I (*b*) If a Man ſueth another in the Spiritual Court for a Lay Fee, which is 15 H. 5. pl. 22.
Land or Tenements, or the like, then he ſhall have a Prohibition, and the
Writ ſhall be, *We prohibit you*, &c. *that you do not hold Plea*, &c. *of the*
King's Lay Fee in S. *whereof he complains that* H. *draws him into Plea*, &c.
And he may have another Writ unto the Party himſelf, *&c. That he do not*
purſue, &c. and he may ſue an Attachment upon it; and he may ſue an At-
tachment only againſt the Party, or againſt the (*c*) Judge only, or againſt
both, at the Election of the Party who will ſue. And if the Judge do dwell 9 H. 6. 54.
in one County, and the Party in another County, then if he will have an At- 15 H. 5. pl. 22.
tachment againſt both, he muſt ſue forth ſeveral Writs. And ſo it ſeemeth,
if he ſue ſeveral Prohibitions againſt them, he ought to ſue ſeveral Attach-
ments againſt them, if he will ſue both, although they be dwelling in one
County.

K And a Man ſhall have an Attachment upon a Prohibition againſt the Judge, if he refuſe to receive the Prohibition, and to admit of it.

(*a*) In Debt on ſimple Contract againſt an Executor, a Prohibition lies, for there is no Remedy for this at Common Law againſt Executors. 13 *H.* 4. 5. *per Thirning.* 8 *Ed.* 4. 13. *per Cateſby.*

(*b*) But if the Biſhop himſelf ſues, the Writ is good, *Ne ſequatur.* 28 *Ed.* 3. 94. and ſee there divers join in an Attachment on a Prohibition, as where they are jointly ſigned, *&c.* 14 *H.* 6. 9.

(*c*) Where there ſhall be an Attachment againſt the Judge and Party by a ſeveral *Pone per vad.* ſee 33 *Ed.* 3. *Brief* 912. For the Act of the Judge is depending on the Suit and Act of the Party, and ſee there an Attachment on a Prohibition againſt the Plaintiff and the Judge, where the Prohibition was only directed to the Judge, and held by *Newton* not good. For the Plaintiff in the Suit there ſhall not anſwer to the Contempt, but only to the Treſpaſs; becauſe no Prohibition was directed to him, and ſo he cannot be joined in the Action. But *Aſcough contra*, that the Law is in itſelf a Prohibition, and ſo there needs no Mention of any Prohibition, and therefore the Plaintiff ſhall anſwer for the Contempt, as in a *Præmunire*, *&c.* which *Norton* agreed, had the Prohibition been directed to both of them, and yet this Surmiſe is not traverſable. 19 *H.* 6. 54. *a. b.* See accordant of the Matter of the Prohibition, that it is not traverſable. 9 *H.* 6. 61. *a.* 21 *Ed.* 3. 29. *a.* 38. *b.*

V. 11 H. 4. 47. by which it ſeemeth a ſpiritual Thing.

L (*a*) And a Prohibition lieth, if a Man be ſued in the Spiritual Court for the Collation unto a Grammar School.

7 H. 4. 1.

M If a Man ſue for Treſpaſs in the Spiritual Court, the King or the Party ſhall have a Prohibition and Attachment, as before is ſhewed, unto the Judge or Party, or unto them both.

N (*b*) In ſome Caſes a Man ſhall have a Prohibition when he is ſued in the Spiritual Court for the Tithes of his Lands. As if a Man be the King's Tenant, and holdeth of him in Chief by Knights Service, and is ſued in the Spiritual Court for the Tithes of the Demeſne Lands, he ſhall have a Prohibition, becauſe that theſe Lands may come into the King's Hands by reaſon of Wardſhip, or by Eſcheat; and then perhaps the King ſhall be otherwiſe charged than he ought to be charged, and therefore the ſame ought to be tried before the King in his Chancery.

Note; Tithes ſued for in Chancery.

And ſo if a Biſhop grant unto a Preſentee in the Church of *Lincoln* the Tithes of his Demeſne Lands, to him and his Succeſſors; now if the Preſentor be impleaded in the Spiritual Court for theſe Tithes, the King may grant a Prohibition; and the Form is ſuch:

[41.]

The King to ſuch a Judge, greeting, &c. *The worſhipful Father the Biſhop of* Lincoln *hath ſhewn unto us, that whereas* I. *Preſentee in the Church of the bleſſed* Mary *of* Lincoln, *holds of his Gift all the Tithes of his Demeſne Lands, or of his Demeſne of* N. *to which the ſame Biſhop and his Predeceſſors, Biſhops of the aforeſaid Place, have been accuſtomed to collate, the Prior of Saint* Katherine *without* Lincoln *claiming thoſe Tithes to belong to the Church of* B. *thereupon draws him into Plea,* &c. *And becauſe the aforeſaid Plea touches our Crown and Dignity, eſpecially when the Collation of the ſame Tithes may devolve to us by reaſon of Wardſhip or Eſcheat, becauſe alſo we in our Demeſnes, and likewiſe many Noblemen of our Realm in their Demeſnes, collate to the like Kind of Tithes, we prohibit you,* &c.

A (*c*) Alſo a Man may ſue a Prohibition directed unto the Sheriff, that the Sheriff do not ſuffer the King's Lay Subjects to come to any Place at the Citation of the Biſhop, *to make any Cognizances or perform an Oath, except in Matrimonial and Teſtamentary Cauſes.* And the Party may have thereupon an Attachment againſt the Biſhop, if he cite or diſtrain any one to appear before him to take an Oath at the Will of the Biſhop, againſt the Will of him who is ſo ſummoned or cited. And by that it appeareth, that thoſe general Citations which

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(*a*) A Prohibition was granted to the Spiritual Court of *Exon*, where a Man was libelled againſt for teaching School without Leave from the Biſhop. *Trin. Nono Annæ in Banco Reginæ.*

(*b*) See *Rot. Parliament.* 8 *Ed.* 2. M. 18. in the Caſe of the Propriator of *Twineham* Church adjudged *contra.* See *Paſ.* 37 *Eliz. C. B.* in the Caſe of Sir *Edward Wingfield.*

(*c*) See *Raſt. Prohibition, pl.* 6. in Appeal, a Prohibition formed on *Articulos Cleri*, and there it is *ad aliqua recognit' per Sacramentum faciendum.* Without doubt this cannot extend to the Depoſitions of Witneſſes in another Cauſe of Eccleſiaſtical Juriſdiction, and by the Recognizances in Debt here mentioned in the following Sections, muſt be meant according to the Form of the Writ in the Regiſter next enſuing, *fol.* 36. and in the five Writs there following; ſo it appears by the Writ at large in *Raſtal*, that it is intended of an Acknowledgment of a Debt confirmed by an Oath by a voluntary Agreement and Conſent of the Lay Gens.

Biſhops make to cite Men to appear before them *pro ſalute Animæ*, without expreſſing any Cauſe, are againſt the Law, and the Party may have an Attachment againſt the Biſhop for the ſame, and may ſue a Prohibition ſo to do. See 50. N. And if he do expreſs any Cauſe in the Citation, it ſeemeth by the Writ before, that it ought to be for ſome Matrimonial or Teſtamentary Cauſe.

B If a Man doth acknowledge in the Spiritual Court, that he oweth another Man one hundred Pounds, to pay him at a Day certain, and after doth not pay the ſame, *&c.* if he be ſued in the Spiritual Court for this Debt, he ſhall thereupon (*a*) have a Prohibition: And ſo if he acknowledge in the Spiritual Court, that he ought to pay to ſuch a one a hundred Marks at ſuch a Day, *&c.* he ſhall not be ſued in the Spiritual Court for that Debt; and if he be, he ſhall have a Prohibition and Attachment thereupon. But if a Man, by reaſon of Marriage or of a Will, doth acknowledge in the Spiritual Court, that he ought to pay a hundred Marks, or any other Sum, at a certain Day; then if he do not pay it according to his Acknowledgment, he may be ſued in the Spiritual Court for the ſame, and a Prohibition will not lie (*b*). 8 Ed. 4. 13. Poſt. 44. A.

C And if a Man do acknowledge in the Spiritual Court to pay a certain Debt at a certain Day, and doth not pay it at the Day, for which the other ſueth him in the Spiritual Court, and excommunicateth him there, becauſe he did not pay it at the Day; the other Party ſhall have a Prohibition againſt him. Vide 22. A. 70. Thorpe.

D If a Man do recover a Debt in the Spiritual Court againſt another, and after ſueth there to have Execution; the Party grieved ſhall have a Prohibition againſt the Party and the Judge, and an Attachment upon the ſame.

E If a Man be indebted unto the King, or bounden to render an Account unto him, and after his Executors are ſued in the Spiritual Court for a Debt which doth not concern Matrimony or Teſtament; his Executors ſhall have a Prohibition againſt the Judge, *&c.* rehearſing the ſpecial Matter, *&c.* 8 *Ed.* 4. 13. Poſt. 43. K.

F Where an Abbot or Biſhop, or other Perſon whatſoever, ſueth in the Spiritual Court, becauſe he taketh Toll, or other Compoſition or Cuſtom of his Tenants, *&c.* there the Party grieved ſhall have a Prohibition againſt him; or the King may ſue this Prohibition and Attachment thereupon.

G Where a Man granteth Parcel of his Manor to another Parſon in Fee, to be quit of Tithes by Deed, and the Parſon with the Aſſent of the Ordinary grants unto him, that he ſhall be quit of Tithes of his Manor for this Parcel of Land, *&c.* if he or his Aſſignee be afterwards impleaded in the Spiritual

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(*a*) See the foregoing Note, and 12 *H.* 7. 22. 20 *Ed.* 4. 10. 2 *H.* 4. 10. 11 *H.* 4. 88. 38 *H.* 6. 29. But by the Opinion of *Spelman* the Court ſhall puniſh him *ex officio*. See the Caſe 2 *H.* 4. 10. where a Vicar was ſued before the Pope's Collectors, that he would not ſue for an Increaſe of his Portion, and thereupon (being ſued for this before the Pope's Collectors) a Prohibition was awarded. *Note*; The Bond was to pay at the Pope's Chamber.

(*b*) So if he promiſes the Payment of Tithes. 20 *Ed.* 4. 10.

Vide Br. Preſcription 603. Court for Tithes of his Manor, or any Parcel of his Manor, he or his Aſſignee ſhall have a Prohibition upon that Deed; and if the Deed were made before Time of (*a*) Memory, and ſo had continued to be quitted of Tithes of his Manor, he ſhall have a Prohibition, if he be impleaded for the Tithes of that Manor, or any Parcel thereof, upon the Matter ſhewed.

H If a Man ſue any Prohibition to any Spiritual Court, and the Judges will not receive the ſame, or will not allow it, and becauſe he bringeth the Prohibition, they make a Citation againſt the Party, to anſwer before them for the ſame Cauſe; now he ſhall have a new Prohibition upon the Matter directed unto the Judges there, *&c.* And alſo he ſhall have an Attachment thereupon, if they proceed againſt him in their Court. And it is not material, whether the Prohibition were ſued legally or erroneouſly, becauſe he ſhall not be puniſhed for ſuing a Prohibition in the King's Court.

I A Man deviſeth Lands in *London* in Mortmain, and by reaſon of this Deviſe the Abbot, or he to whom the Deviſe is made, ſueth for theſe Lands, or for any Parcel thereof, in the Spiritual Court by Colour of the Deviſe: The Party grieved by this Suit ſhall have a Prohibition.

K If a Man ſue another in the King's Court in Treſpaſs for Battery, or taking of his Goods, and afterwards is Nonſuit, and diſcontinueth the Suit, for which the Defendant ſueth him in the Spiritual Court for Defamation, *&c.* he who hath ſued in the Temporal Court ſhall have a Prohibition againſt him, and an Attachment thereupon, if he ſue again in the Spiritual Court: And alſo ſhall have ſuch Prohibition unto the Judge, and Attachment againſt him, if he hold Plea therein after the Prohibition delivered unto him.

L Where a Compoſition is made by Deed indented at the Time of the Avoidance of a Prior, that an Abbot ſhall nominate ſix Perſons, and that the other ſhall elect one of them to be Prior unto the Ordinary; now if he who preſenteth be ſued in the Spiritual Court, becauſe he hath preſented one unto the Ordinary for to be Prior, he ſhall thereupon have a Prohibition againſt [42.] him who ſueth there. And if the Sub-Prior and Convent ſue in the Spiritual Court to avoid ſuch Preſentment, he ſhall have a Prohibition againſt the Judge, *&c.*

A 8 Aſſ. 28. Br. Aſſiſe 138. 6 H. 7. 14. And alſo the King may have a Prohibition directed unto the Ordinary, that he ſhall not viſit the Hoſpitals which are of the King's Foundation, or of the Foundation of his Predeceſſors; becauſe that the Chancellor of *England* ought for to viſit them, and no other. And ſo is it of the King's or his Progenitors free Chapels, no Ordinary ſhall viſit them, but the Chancellor of *England*, &c.

B 6 H. 7. 14. Keble, vide 8 Aſſ. pl. 29. Br. Aſſ. 138. 8 Ed. 3. 69. pl. 37. Where a common Perſon is the Founder of an Hoſpital, which is donative by his Letters Patent, and doth conſiſt all in Temporalties, if the Ordinary will viſit ſuch Hoſpital, the Founder ſhall have a Prohibition againſt him: Or if the Ordinary will cite any of the poor Men to appear before him for an Hoſpital Cauſe, or to remove him, the Founder, or his Heir, ſhall

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(*a*) *Note*; The Conſideration is triable, although before Time of Memory. See 26 *Ed.* 2. *Preſcript.* 52. 15 *H.* 3. *Prohibition* 22.

have a Prohibition. And ſuch Hoſpital may be appendant unto a Manor, as well as the Advowſon of a Church.

C And if a Man recover his Preſentation by *Quare impedit*, and hath his Clerk admitted and inſtituted, and another Perſon, who claimeth the Advowſon by Proviſion from the Pope, ſueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Preſentment, *&c.* ſhall have a Prohibition unto the Judge for to ſurceaſe, *&c.* 11 Co. 99.

D So if the King hath Title to preſent unto an Advowſon, by reaſon of a Ward who is in the King's Hands, and after the ſix Months paſt preſenteth his Clerk, who is admitted and inſtituted, and the Biſhop preſent his Clerk before to the ſame Church for Lapſe, who was admitted and inſtituted, *&c.* by reaſon whereof the Biſhop's Clerk ſueth the Clerk, who was preſented by the King in the Spiritual Court; the King's Clerk ſhall have a Prohibition directed unto the Judges, *&c.* that they ſhall not proceed in the Plea, *&c.*

E If a Man ſueth a Prieſt or a Monk, or Canon or Clerk, in the Temporal Law, in Debt or Treſpaſs, and cauſe him to be arreſted by his Body; if they ſue for his Arreſt a Citation in the Spiritual Court *touching the laying of Hands upon a Clerk by Violence*, the other ſhall have a Prohibition directed unto the Judge. See the Stat. 9 Ed. 2. Articuli Cleri.

F (*a*) If two Men are ſworn to give Evidence unto a Jury, and do ſo, for which certain Perſons are indicted; if they who are indicted ſue them in the Spiritual Court who gave Evidence, for Defamation, they ſhall have a Prohibition.

G Where a Man ſueth in the Spiritual Court for Spiritual Cauſes, and the Defendant purchaſeth a Prohibition directed unto the Judges there, and delivers the ſame, and for ſo doing the Judges do excommunicate him for the Offence he did to the Church, in bringing a Prohibition to them upon a Spiritual Cauſe; the Party excommunicate ſhall have a new Prohibition upon that Matter, commanding them for to revoke the ſame. For a Man ſhall not be puniſhed for ſuing forth Writs in the King's Courts, whether he have Right or Wrong. Co.Lit.161.a.

H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants, or the Chancellor, or any of his Servants, commits any Treſpaſs in *London*, or elſewhere, and are ſued for this Treſpaſs in *London* before the Mayor or Sheriff for Treſpaſs, they ſhall have a (*b*) *Superſedeas* directed unto the Mayor for to ſurceaſe, and bid the Party

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(*a*) And ſo it ſeems if a Feme be ſued for Defamation for proſecuting a *Homine Repleg'* for her Huſband. 33 *Ed.* 3. *Brief* 912.

(*b*) But ſee ſuch *Superſedeas* ſhall not be allowed after Imparlance; *per Cur'*, 9 *Ed.* 4. 53. 20 *H.* 6. 32. *a.* 22 *H.* 6. 7. Yet it ſhall be after Plea pleaded. 11 *H.* 4. 68. *per Hankford.* *Contra* 11 *H.* 6. 8. *a. b.* But there the Suit was in *C. B.* See 16 *Ed.* 4. 5, 6. 27 *H.* 6. 22. *&* *Dyer* 33, 34. 3 *H.* 6. 20. If a Clerk in Chancery and his Wife, or other Perſon, be joined in a Suit by Writ of Treſpaſs or Debt in *C. B. &c.* a *Superſedeas* is not allowable for the Clerk. But if a Clerk of *B. R.* and another be impleaded in *C. B.* in Treſpaſs, a *Superſedeas* for one ſhall be allowed for the others: For the Plaintiff may have his Action againſt all of them in *B. R.* 14 *H.* 4. 27, 22. 34 *H.* 6. 29. *b.* 35 *H.* 6. 20. 20 *H.* 6. 32. *a.* 10 *Ed.* 4. 4, 5. *Dyer fol. ult. a.*

Vide 4 H. 3. ſue in the Chancery, if it be needful for him. And there are divers Forms
Prohib. 15. of theſe Writs in the Regiſter; and one Writ reciteth, that this Cuſtom and
Vide 43. D. Privilege was confirmed by Authority of Parliament. *Anno* 18 *Ed.* 3.

11 H. 4. 88. If a Woman hath Title to ſue a *Cui in vita*, and ſhe ſwear unto the Tenant, I
that ſhe will not ſue the *Cui in vita* againſt him; if ſhe afterwards ſueth forth
the Writ, for which the Tenant ſueth her in the Spiritual Court for Breach of
her Oath, ſhe ſhall have a Prohibition, becauſe the Oath toucheth a temporal
Thing, *viz.* Land.

If two ſeveral Patrons preſent ſeverally to the Biſhop, and thereupon one K
ſueth a *Quare impedit* or a *Darrein Preſentment* againſt the other, and recovereth,
and hath his Clerk admitted, for which the other Clerk ſueth the
Clerk who recovereth by Appeal or otherwiſe, in the Archbiſhop's Court, becauſe
that he was not admitted at the Preſentment of his Patron; the Patron
who recovereth ſhall have a Prohibition directed unto the Archbiſhop, &c. or
againſt the Clerk that ſueth there for that Cauſe, that he do not ſue for that
Cauſe, &c.

And ſo it is if the Patron be diſturbed by the Preſentment of a Stranger, L
and the Diſturber's Clerk ſueth the very Patron's Clerk in the Spiritual
Court; or contrary, the Clerk of the rightful Patron ſueth the Clerk of
the Diſturber in the Spiritual Court, he who is grieved ſhall have a Prohibition.

And if the King do collate unto any Prebendary, or recovereth the Col- M
lation unto any Prebendary, and hath his Clerk admitted, and afterwards
the Clerk who is vexed ſueth in the Spiritual Court, by means of Appellation,
or Commiſſion, or other Cauſe, by which the Title of the Collation
may come in Debate; the King ſhall have a Prohibition directed unto the
Judges where the Suit is, commanding them, that they do not proceed.
And if the King do recover his Collation or Preſentation unto any Church, N
[43.] and after Execution of the Judgment is diſturbed by Appeals, or Citations,
or other ſuch Means; or if that after the Clerk be inducted, the King's
Clerk be vexed by Appeals, or Commiſſions, or Citations in the Spiritual
Court for this Cauſe; then the King ſhall have a Writ directed unto all
Sheriffs, Mayors, and other Officers, to take and arreſt the Bodies of thoſe
who made ſuch Impediments, to diſturb the Execution of the Judgment, or
of ſuch Preſentations or Collations made by the King; and alſo ſhall have
a Writ of Prohibition unto the Biſhops and their Officers, that they do
not any Thing in Derogation of his Preſentment or Collation, or of the
Execution of the Judgment given for the King. And alſo the King may
ſue ſuch Prohibition directed unto the Party himſelf who ſueth ſuch Appeals,
Provocations, Citations, Inſtruments or Proceſs, &c. that they do not ſue
ſuch, or permit ſuch Appellations, Provocations or Impediments to be.
And the King ſhall have an Attachment upon that directed unto the Sheriff,
&c. if the Party follow or ſuffer ſuch, &c. to be ſued contrary to that
Prohibition.

A If the King do recover his Preſentment unto a Church, and hath a Writ unto the Biſhop, *&c.* to remove the other (*a*) Incumbent, for which the Incumbent ſueth an Appeal in the Archbiſhop's Court, *&c.* by reaſon whereof the Archbiſhop ſendeth a Prohibition, that he do not admit the King's Clerk pendent the Appeal, *&c.* then the King ſhall have a Writ directed unto the Archbiſhop and his Officers to take off his Inhibition, and that they do nothing, nor ſuffer any Thing to be done by others, in Derogation of the Crown or of the King's Right; and ſhall have another Writ againſt the Incumbent, that he follow not ſuch Appeals, Provocations, or other Proceſs or Impediments. And alſo the King may have an Attachment directed unto the Sheriff againſt ſuch Incumbent, if he go on there after ſuch Prohibition directed unto him.

B And it appeareth by the Regiſter, that another common Perſon who recovereth his Preſentment, or hath Title to preſent, ſhall have ſuch Writ of Prohibition unto the Spiritual Judges, or the Party, that they ſhall not proceed, or purſue ſuch, *&c.* and alſo Attachment againſt them if they do, *&c.* And where the King's Clerk is in Poſſeſſion by ſuch Recovery, and is after diſturbed by another with Force and Arms, that he cannot take the Tithes and Profits of the Church, he ſhall then have a ſpecial Commiſſion directed unto the Sheriff, and other the King's Officers, to take ſuch Perſons, as well within Liberties as without, and to carry them unto the Gaol, there to remain till they have other Command from the King.

C And if the King do recover his Preſentment, and hath a Writ unto the Biſhop, and his Clerk is inſtituted and inducted; if the Biſhop at the Suit of others hath Provocations, or other Inſtruments, to cite the King's Incumbent to the Court of *Rome*, or elſewhere out of the Kingdom; then the King ſhall have a Prohibition directed unto the Biſhop, that he do not cite, nor cauſe to be cited, ſuch Incumbent, *&c.* and the King may have an Attachment upon it, if, *&c.* And it ſeems that the King ſhall have a Prohibition without any Recovery had before, if his Preſentee be inſtituted, *&c.* And ſo it ſeems a common Perſon ſhall have and ſue ſuch a (*b*) Prohibition, when the Suit is to try the Title of the Preſentment or Collation; yet the Writs in the Regiſter are and ſpeak of a Recovery.

D If a Man make an Oath to infeoff me before ſuch a Day, *&c.* if he do not infeoff me, I cannot ſue him in the Spiritual Court for Breach of his Oath, becauſe the Thing which is to (*c*) be done is a temporal Act, and ſhall be tried at the Common Law, whether he hath done it or not; and therefore if he be ſued in the Spiritual Court for that Cauſe, he ſhall have a Prohibition. 11 H. 4. 83. contrary for perſonal Things. 4 H. 3. Prohibition 15. See 42. F. 2 Ed. 4. 10.

(*a*) And *Note*; If the Party be convicted in an Attachment on a Prohibition for the King, and he procures an Appeal, *&c.* yet he ſhall not have the Judgment which the Stat. 27 *Ed.* 3 *c.* 1. gives againſt thoſe who make Default in a *Præmunire*; but only That he ſhall be taken. 30 *Ed.* 3. 11. *b.*

(*b*) See 22 *Ed.* 4. 20. 38 *H.* 6. 24. 11 *H.* 4. 88. 12 *H.* 7. 22.

(*c*) See 2 *H.* 4. 10. *a. b.* accordant; and ſo 11 *H.* 4. 88. For by *Hankford*, If it be found by a Jury, he ſhall be condemned and awarded to perform the Oath. *Note* 27 *Aſſ.* 70. In a Suit in Court Chriſtian *pro læſione Fidei*, they cannot award one to pay the Debt, but only a Corporal Penance, which he may commute.

4 Ed. 4. 37. 37 H. 6. 9. 22 Ed. 4. 2.

E And if a Man be ſued in the Spiritual Court, and the Judges there will not grant unto the Defendant the Copy of the Libel, then he ſhall have a Prohibition directed unto them for to ſurceaſe, &c. until they have delivered the Copy of the Libel, according unto the Statute made *Anno* 2 *H.* 5. And alſo the Defendant may have an Action againſt them upon the ſaid Statute, if they will not deliver the Copy of the Libel, whether the Cauſe in the Libel be a ſpiritual Cauſe or not.

37 H. 6. 9. Aſhton. 46 Ed. 3. 32. 8 H. 8. Prohibition 19.

F (*a*) If a Man maketh a Deviſe of Lands or Tenements deviſeable, the Party to whom the Deviſe is made ſhall not ſue in the Spiritual Court to have the Lands or Tenements ſo deviſed; but if he do, the other Party ſhall have a Prohibition. But if he deviſeth Goods or Chattels Real, as a Term for Years, or a Ward; there he may ſue in the Spiritual Court for ſuch Things.

13 H. 6. Prohibition 3. 4 Ed. 4. 37. 38 H. 6. 14. 12 H. 7. 16.

G If a Man ſueth in the Common Pleas for Treſpaſs, if he ſue him in the Spiritual Court for the ſame Cauſe, he may (*b*) ſhew the Matter in the Common Pleas, and ſhall have a Prohibition from thence directed to the Judges, &c. And ſo always when the Matter is depending in the Common Pleas, if he ſue for the ſame Cauſe in the Spiritual Court, he ſhall have a Prohibition out of the Common Pleas.

31 H. 8. Br. Prohibition 17. 2 Ed. 4. 11. N.B. ante 31.

H But a Man ſhall have a Prohibition out of the Chancery or the King's Bench upon his Surmiſe, ſurmiſing that he is ſued in the Spiritual Court for a temporal Cauſe, &c. although he be not ſued in the King's Bench, or elſewhere, for that Cauſe.

2 Ed. 4. 11. V. 18 H. 8. 5.

I If a Man ſue a *Quare impedit*, and deliver it of Record, as he may, and afterward the Defendant, or his Clerk, ſue a Citation againſt the Preſentee of the Plaintiff; the Plaintiff in the *Quare impedit* ſhall have a Prohibition in the Common Pleas before the Return of the Writ of *Quare impedit*, becauſe it appeareth on Record that ſuch a *Quare impedit* is depending.

Ante 41. G. 8 Ed. 4. 13. [44]

K If a Parſon grant to one by Deed, that he ſhall be diſcharged of Tithes of his Lands, and afterwards he ſueth in the Spiritual Court for the Tithes, &c. it is ſaid that he ſhall not have a Prohibition, becauſe he may pretend this Matter in the Spiritual Court, to diſcharge him of the Tithes. But if it were upon a Compoſition made before Time of Memory, and now the Parſon ſueth for the Tithes of thoſe Lands, there he ſhall have a Prohibition againſt the Parſon, &c. *Quære* the Diverſity, for I think he ſhall have a Prohibition in both Caſes. The Caſe is *M.* 8 *Ed.* 4. 14.

Vide Com. 350 and 309. 37 H. 6. 8. 45 Ed. 3. 24.

A If a Man promiſe one ten Pounds, if he will marry his Daughter; if he marry the Daughter, and the other will not pay the Money, he ſhall not ſue for the ſame in the Spiritual (*c*) Court. But if he promiſe one with his

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(*a*) See 22 *Ed.* 4. *Conſultation* 5. 8 *H.* 5. *pl.* 19. 38 *H.* 6. 14. 40 *Ed.* 3. 36. 13 *H.* 6. *Prohibition* 3. *ante* 31.

(*b*) See 7 *H.* 4. 1. *Si vero agatur in Curia Chriſtianitatis tantummodo ex officio*, and the Party has Correction, it ſeems he ſhall not have a Prohibition: *Quære.* See 38 *H.* 6. 14. *Raſt. Entr. pl.* 484. 10 *H.* 6. 21.

(*c*) See the Caſe of *Joſline* and *Shelton*, 4, 5 *Ph.* & *Mar.* & 33 *Ed.* 3. *Juriſdiction* 25. *Poſt.* 58. S. 14 *Ed.* 4. 6. 17 *Ed.* 4. 4. *b.* 15 *Ed.* 4. 32. *a.*

Daughter in Marriage ten Pounds, *&c.* if he doth marry the Daughter, and he do not pay the Money, he may ſue in the Spiritual Court for the ten Pounds, becauſe it concerneth Matrimony. Which Diverſity ſee in 22 *Ed.* 3. *Lib. Aſſ.*

Vide 50. S. 22 Aſſ. 70. 17 Ed. 4. 4. 15 H. 3. Prohib. 22.

B (*a*) If the Teſtator charge his Executors to pay his Debts to his Creditors, if they do not pay them, the Creditors may ſue in the Spiritual Court; and they ſhall not have a Prohibition, for that this Charge of the Teſtator is as a Deviſe unto his Creditors: *Quod vide H.* 9 *Ed.* 3. *Prohibition* 17.

16 H. 3. Ibid. 24.

C (*b*) If a Man giveth Goods in Marriage with his Daughter, and afterwards they are divorced; the Wife may ſue in the Spiritual Court for the Goods, and no Prohibition will lie thereof.

13 H. 3. Prohib. 21. Vide 139.

D If a Stranger do diſturb the Executors to perform the Will, they may ſue him in the Spiritual Court, and no *Prohibition* lieth againſt them for ſo doing. *T.* 4 *H.* 3. *Prohibition* 28. *acc.*

F. Prohibition 28.

E If a Man ſueth a Prohibition becauſe another draweth him into the Spiritual Court for an Advowſon of a Church, *&c.* upon the Attachment upon the Prohibition ſued he may declare, that he did deforce him of great and ſmall Tithes, *&c.*

4 Ed. 3. 27, 29. Prohibition 2.

F If one Parſon ſueth another Parſon in the Spiritual Court for Tithes of the Profits ariſing in one hundred Acres of Lands within the Bounds and Limits of his Pariſh being, for which the Patron of the other Parſon purchaſeth an *Indicavit* unto the Spiritual Judge for to ſurceaſe, *&c.* then may the Parſon who ſueth in the Spiritual Court come into the Chancery, and have a Writ unto the Biſhop for to inquire of the Value of the Church, according to the Tax of Tithes now current, as upon the Value of the Tithes demanded, and to certify the King in the Chancery thereof by Letters under his Seal, with the Writ: And it ſeemeth he ought ſo to do before he have a Conſultation granted in that Caſe.

Poſt. 45.

G If a Biſhop will cite or compel the King's Chaplains, or the Maſters of the Chancery, which are the King's Chaplains, to make their perſonal Reſidence upon their Benefices when they are attending in the King's Service, they may have a Prohibition unto the Biſhop, *&c.* and upon the ſame an *Alias*, *Pluries* and Attachment. But if they be not attending in the King's Service, then the Ordinary may compel them to make perſonal Reſidence upon their Benefices; and the Form of the Writ is ſuch:

The King to the Worſhipful, &c. *Whereas our Clerks, while they continue in our Service, ought not to be compelled to keep Reſidence perſonally upon their Benefices, or to be otherwiſe diſquieted or moleſted hereupon; We and our Progenitors, formerly Kings of* England, *having always, from Time out of Mind, hitherto uſed theſe Liberties and Privileges for our Clerks, command you, that you in no wiſe compel our beloved Clerk, Parſon of the Church of* B. *&c. who by our Command continually attends our Service in our Chancery, to perſonal Reſidence upon his Benefice, while he ſtays in our ſame Service*, &c.

(*a*) 7 *Eliz.* 305. *Bro. Debt* 135. 22 *Ed.* 3. *Aſſ.* 70. (*b*) 26 *H.* 8. 7. 13 *Ed.* 3. or *H.* 5. 13.

And if the King's Chaplain be choſen Dean of any Church, which Office requireth perſonal Attendance and Reſidence, and the Biſhop will compel him to take the Deanery which requireth that perſonal Reſidence, by ſpiritual Cenſures and Citations, *&c.* then he ſhall have a Prohibition unto the Biſhop by theſe Words: *We ſtrictly prohibit you, that you by no Means whatever compel him the ſaid* A. *to keep any Reſidence on his Benefice, or to take upon him the Duty aforeſaid, or require any Thing for Reſidence of this Kind, while he ſo attends our Service aforeſaid; and if any Thing in the Fruits, or other Goods of the Church of our ſaid Clerk, have been put under Sequeſtration upon that Occaſion, by him the ſaid Biſhop or* his, *you cauſe the ſame to be releaſed without Delay,* &c. And ſo if the Clerk abide in the King's Service in the Company of our beloved and truſty *R.* of *P.* in the Parts of *Gaſcony.*

And ſo if the Biſhop will amerce the King's Chaplains, and compel them to pay a certain Sum of Money for Non-reſidence, they ſhall have a Prohibition.

Vide Stat. Articuli Cleri, cap. 2.

If one ſue another out of the Realm for Debt, or other Cauſe, whereof the King's Court may have Conuſance, he ſhall have a Prohibition againſt him, and an Attachment upon the ſame, if, *&c.* And ſo if one Clerk ſueth another upon the Title of Collation of any Prebendary out of the Realm, *&c.* he may have this Prohibition: And the King may ſend a Writ to him who is ſo ſued out of the Realm, commanding him upon Pain of Forfeiture of ſo much as he may forfeit, that he go not out of the Realm for to anſwer thereunto, whereof the Conuſance doth appertain unto the King's Court. And alſo the King may ſend unto the Prebend, if he be ſued out of the Realm for Title of the Prebendary, to prohibit him upon Pain of Impriſonment and of Forfeiture of what he may forfeit, that he do not go out of the Realm, nor anſwer there by his Proctor or otherwiſe, *&c.* H

And if any Man do purchaſe from the Court of *Rome* any Citation againſt any Clerk or others, directed unto the Archbiſhop of *Canterbury*, or unto [45.] others, to cite ſuch Perſons to appear before the Pope, *&c.* and to anſwer for the Collation or Preſentation unto any Benefice or Prebendary; then the King ſhall ſend his Writ of Prohibition unto the Archbiſhop, or other to whom ſuch Proceſs is directed, that they do not cite, *&c.* and may have another Prohibition to the Party himſelf, and an Attachment upon the ſame, *&c.* I

And when a Conſultation is once duly granted, then the Court may proceed in the Spiritual Court, notwithſtanding that the Party purchaſe a new Prohibition directed unto them, if the Libel be not changed: *Quod vide* by the Statute of 50 *Ed.* 3. *c.* 4. A

Indicavit, ante 44.

The Writ of Prohibition, which is called *Indicavit*, moſt commonly lieth between four Perſons, whereof two are Patrons and two are Clerks, and properly lieth where one Clerk ſueth another in the Spiritual Court for Tithes, which do amount unto the fourth Part of the Value of the Church at the leaſt; for if it doth not amount unto the Value of the fourth Part, but unto the fifth Part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is ſued in the Spiritual Court: And this Writ may be ſued as well againſt the Judge as the Party. And the King may ſue this Writ B

Writ where his Clerk is impleaded for Tithes amounting to the Value of the fourth Part of the Church, or of the Church itſelf. And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advowſon itſelf, or ſuch Vicarage, Prebend or Chapel, as well as if he were impleaded of the Tithes of the Church, Vicarage, Prebend or Chapel.

And it appeareth by the Regiſter, the Writ of *Indicavit* which the King ſhall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making Mention what is the Value of the fourth Part, is ſuch:

The King to the Official of the Biſhop, &c. *and to his Commiſſaries, greeting: Whereas* A. *of* B. *Parſon of the Church of* W. *holds all the Tithes forth coming of the Marſh*, &c. *of our Advowſon, the Abbot of Battel claiming them to belong to his Church of*, &c. *draws him into Plea*, &c. *We prohibit you*, &c. *whether the Advowſon of the ſame Tithes belongs to us or to the aforeſaid Abbot, becauſe Pleas*, &c. And this Writ of *Indicavit* ought to be ſued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there, the *Indicavit* is void.

C And a Man ſhall not have an *Indicavit* before the Party in the Spiritual Court hath libelled there againſt the Defendant; and the Party who ſueth the *Indicavit* ought to ſhew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the Party hath libelled in the Spiritual Court, 31 H. 6. 13. and the Party is put to anſwer, then it is called and ſaid, that the Suit is conteſted in the Court of Chriſtianity.

D And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowſon; and that for a common Perſon, as well as for the King. And the Writ of *Indicavit* ſhall not mention, that the Tithes and Offerings which are in Suit do amount unto the fourth Part of the Church, but *the Tithes forth coming of one hundred Acres* 4 Ed. 3. 20, 29. Prohibition 1. *of Land*, or of ſuch a Manor: And if theſe Tithes be not to the fourth Part of the Value of the Advowſon, the other Party may alledge and ſurmiſe the ſame, and have a Conſultation.

E And alſo *Indicavit* lieth, where one Party is Parſon imparſonee, and the Clerk of the other Patron ſueth him in the Spiritual Court for Tithes, *&c.* he may ſue the *Indicavit*. And ſo if an Abbot be Parſon imparſonee of a Church, and another Abbot is Parſon imparſonee of another Advowſon, and one ſueth the other for Tithes appertaining to his Advowſon, amounting unto the fourth Part of a Church, *&c.* the other ſhall have the *Indicavit* againſt him.

And if an Abbot be Parſon imparſonee of an Advowſon, and hath a Vicar endowed; then, if the Parſon be ſued in the Spiritual Court for the fourth Part of the Tithes of his Parſonage, he ſhall have an *Indicavit*. And ſo if the Vicar be ſued for the fourth Part of the Tithes and Offerings of his Vicarage, the Parſon, or he who is Patron of the Vicarage, ſhall have the *Indicavit*, becauſe they are ſeveral Advowſons; the Parſonage one, and the Vicarage another; and there may be divers Patrons of them. *Quod vide Paſch.* 31 *H.* 6. in Title *Indicavit*. See *Weſt.* 1. *cap.* 35.

If Bailiffs, Mayors, or others, who claim Juriſdiction to arreſt a Man upon a Plaint before them, or to attach his Goods, *&c.* do arreſt one for Treſpaſs or Contract, who was not within their Juriſdiction, the Party arreſted, *&c.* ſhall have a Prohibition directed unto them, *&c.* and the Form is ſuch: F

The King to his Bailiffs A. *of* N. *Whereas it is provided by the Common Council of our Realm, that it may not be lawful for any of the ſame Realm, except for us and our Miniſters, having ſpecial Authority for this Purpoſe, to attach any Perſons paſſing through his Bailiwick or Dominion, to anſwer any Perſon upon Contracts, Covenants or Treſpaſs made out of the ſame Bailiwick or Dominion; We command you, that you do not attach* B. *to anſwer any Perſon before you in your Bailiwick upon Contracts, Covenants or Treſpaſs of this Kind, contrary to the Form of the Proviſion aforeſaid; and if you ſhall have made any Diſtreſs thereupon, that you cauſe the ſame to be delivered,* &c. And if they will not obey the ſame, he ſhall have an Attachment againſt the Bailiffs. And this Writ lieth as well upon Attachment of Goods, as for arreſting of the Body.

If a Woman have Lands which ſhe holdeth in Dower, or of Joint Purchaſe with her Huſband, or of her own Inheritance, if the Sheriff have Proceſs out of the Exchequer to levy the Huſband's Debts which he oweth unto the King; or if the Sheriff have Proceſs out of another Court to levy Debts due by her Huſband to another Perſon; if the Sheriff will diſtrain in the Lands which the Wife holdeth, *&c.* the Wife ſhall have a Writ unto the Sheriff, that he do not diſtrain the Wife who holdeth ſuch Lands, in the ſame Lands, for the Debt of the Huſband; and the Form of the Writ is ſuch: G [46.]

The King to the Sheriff, &c. *Whereas according to the Law and Cuſtom of our Realm, Women ought not to be diſtrained in the Lands and Tenements which they hold in Dower of the Gift of their Huſbands, or which are of their own Inheritance, or which they have purchaſed to themſelves, for paying the Debts of their Huſbands; and you, as we are informed from her heavy Complaint, do diſtreſs* B. *who was the Wife of* A. *in her Lands and Tenements which ſhe holds in Dower of the Gift of the ſame* A. *and alſo which were of the Inheritance of her the ſaid* B. *and of the Purchaſe of her the ſaid* B. *We command you, that you do not diſtrain or cauſe to be diſtrained her the ſaid* B. *in her Lands and Tenements which ſhe holds in Dower, or which are of her own proper Inheritance, or of the Purchaſe of her the ſaid* B. *for the paying the Debts of the aforeſaid* A. *ſome time her Huſband, contrary to the Law and Cuſtom aforeſaid,* &c. *and the Diſtreſs, if any,* &c.

And there is ſuch a Writ unto the Sheriff, where Proceſs cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Huſband, *per ſumm' Scaccarii, &c.* And in that Caſe ſhe may ſue a Writ unto the Barons of the Exchequer, that they ſurceaſe to make out ſuch Proceſs to the Sheriff to diſtrain the Wife in ſuch Lands, *&c.* Another Form of Writ unto the Barons of the Exchequer, to ſurceaſe for to diſtrain the Wife, *&c.* and with a Proviſo in the ſame Writ, that they levy the Debts of the Huſband's Executors, or of his Heir, or of the Lands and Tenements which were the Huſband's, *&c.*

A And if a Man ſue another in the County Court for Debts (*a*) or Chattels, which do amount to the Sum of forty Shillings; then the Party ſhall have a Prohibition againſt him who is Sheriff, that he ſhall not hold Plea thereof, and that he tell the Party that he ſue in the Common Pleas; and the Writ is ſuch: Vide ant. 31.

The King to the Sheriff, &c. *Whereas Pleas of Chattels and Debts which amount to the Sum of forty Shillings, or exceed it, according to the Law and Cuſtom of our Realm, ought not to be pleaded without our Writ; and as we hear* A. *hath impleaded* B. *touching a Debt of one hundred Shillings in your County without our Writ; We command you, if it be ſo, that then you abſolutely ſuperſede that Plea from being further holden in the County aforeſaid without our Writ, and on our Behalf that you tell the aforeſaid* A. *that he may upon Requeſt obtain our Writ of the Debt aforeſaid againſt the aforeſaid* B. *if it ſhall ſeem to him expedient. Witneſs,* &c. And if ſuch Writ be ſued in another Court, then the Writ ſhall be directed unto the Bailiff of the Court, in ſuch Form:

The King to his Bailiffs I. *of* N. *or to his Bailiffs of* N. *greeting: Whereas Pleas,* &c. (as above, until) *without our Writ; and as we hear* A. *impleads* B. *for this, that the ſame* B. *may render to the aforeſaid* A. *Chattels to the Value of ten Pounds, before us in the Court of your ſaid Lord of* N. *or in our Court of* N. *without our Writ; We command you, if it be ſo, that then you wholly ſuperſede that Plea,* &c. (as above). And if they do not ſurceaſe upon this Writ, then he ſhall have an *Alias* and *Pluries*, and an Attachment againſt them, and alſo an Attachment againſt the Party himſelf.

And if a Man do owe unto another Man five Marks, and he ſue ſeveral Plaints for the ſame in the County Court, or in any other Court againſt the Debtor, he ſhall have a Prohibition thereof, and rehearſe the Matter, and that he would defraud the King's Court of its Juriſdiction, and alſo the Party of his Anſwer, *&c.* commanding them that they do not proceed, *&c.* and that he command the Party to ſue at the Common Law in the King's Court; and if they will not ſurceaſe, he ſhall have an *Alias* and *Pluries*, and *Attachment* upon the ſame, *&c.*

And ſo it is if a Man will ſue in the County Court a Writ of Covenant or Treſpaſs, unto his Damage of forty Shillings or more, the Party ſhall have a Prohibition for to ſurceaſe, and thereupon an *Alias*, *Pluries* and *Attachment*, &c.

And ſo if the Executor ſueth in the County, or in a Court Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may ſhew the ſame, and plead unto the Juriſdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do ſurceaſe, *&c.* and if he have Judgment in any of the Plaints ſued for Parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment ceaſe for the Reſidue. See 15 H. 3. Prohibition 13. contr.

(*a*) And ſo if he ſplit an entire Contract into ſeveral Sums under forty Shillings. See 19 *H.* 6. 54. it ſeems the Judgments for ſuch Sums are *coram non Judice*, and void; at leaſt, voidable by Falſe Judgment. *Kelw.* 106. *a.* See 19 *H.* 6. 5. *a.*

And alſo if a Man ſue in the County a Plaint of twenty Pounds, and hath Judgment to recover in that Court; yet the Defendant may ſue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Juriſdiction.

And ſo after Judgment given, and Execution awarded in the County, or in other Court Baron, which hath not Power to hold Plea of Debt of the Sum of forty Shillings, *&c.* or of Damages in Treſpaſs amounting to ſuch Sum, or more, the Party Defendant ſhall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have diſtrained the Party to make Satisfaction, that then they releaſe the Diſtreſs, and that they revoke what they have done therein.

H There is a Rule in the Regiſter thus: *If Pleas of Chattels or Debts which amount to the Sum of forty Shillings, or exceed it, are pleaded in the County or in other Court without our Writ, which is wanting, let not therefore a Writ of Falſe Judgment, nor* Recordare, *nor a Writ of* Executio Judicii, *be made, except in Courts of Cities, and other Courts which have Juriſdictions of this Kind, according to Cuſtom.* [47.]

1 Ed. 4 15. Juſticies lieth without Vi & Armis. Littleton.

A And if a Man ſueth another in the County, or other Court, upon a Plaint of Treſpaſs *Vi & Armis*; the Defendant may ſue a Prohibition unto the Sheriff, or unto the Bailiff, in ſuch Form:

The King to the Bailiffs of B. *&c. Whereas Pleas of Treſpaſſes done with Force and Arms againſt the Peace in our Realm of* England, *ought not to be pleaded without our Writ, according to the Law and Cuſtom of the ſame Realm; and as we hear* W. *hath impleaded* R. *of* T. *before you in the Court of your aforeſaid Lord, of divers Treſpaſſes done to the ſame* W. *by the aforeſaid* R. *with Force and Arms againſt our Peace (as it is ſaid) to the great Damage of him the ſaid* W. *and contrary to the Law and Cuſtom aforeſaid: We command you, if it be ſo, that then you do wholly ſuperſede the Pleas aforeſaid from being further holden before you, telling the aforeſaid* W. *on our Behalf, that he may upon Requeſt obtain for himſelf our Writ of Treſpaſs aforeſaid againſt the aforeſaid* R. *if it ſhall ſeem expedient to him. Witneſs,* &c.

B And if one Man ſueth another in a Court Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Freehold, he ſhall have a Prohibition, and the Form is ſuch:

The King to the Bailiffs of R. *of* P. *greeting: Whereas Pleas of Detinue of Charters or Writings touching Freehold ought not to be pleaded in any Courts which are not of Record, without our Writ, according to the Law and Cuſtom of our Realm; and* E. *hath impleaded* W. *before you in the Court aforeſaid of your Lord of* P. *without our Writ, for this, that the ſame* W. *render to the aforeſaid* E. *three Charters, as we hear: We command you, if it be ſo, that then you do wholly ſuperſede that Plea from being further holden before you in the Court aforeſaid without our Writ, and that you tell the aforeſaid* E. *on our Behalf, that he may upon Requeſt obtain for himſelf our Writ of Detinue of Charters aforeſaid againſt the aforeſaid* W. *if it ſhall ſeem expedient to him. Witneſs,* &c. *in the eighth Year. This Writ was ordained by the Council at* York.

Quare

Quare non admiſit.

C IF a Man do recover an Advowſon, and hath a Writ unto the Biſhop to admit his Clerk, and he will not admit him; then the Party may ſue an *Alias* and *Pluries*, or Attachment, *&c.* or may ſue a Writ out of the Chancery, or out of the Common Pleas, at his Election, *de quare non admiſit*, as well in the Term-time as in the Vacation; but the beſt is in the Term-time to ſue in the Common Pleas: And in this Writ it behoveth him to certify the Recovery. And the Form of the Writ of *Quare non admiſit* for the King is ſuch:

See 12 Ed. 3. Quare non admiſit 6.

The King to the Sheriff, &c. *Summon*, &c. A. *Biſhop of* Wincheſter, *&c. that he be before us ſuch a Day*, &c. *whereſoever*, &c. *Wherefore, when we lately in our Court before us had recovered*, &c. And he ſhall ſay in the Writ, *If the King ſhall make you ſecure*, becauſe the King ſhall not find Pledges, *&c.*

D And if the King do recover his Preſentment in the Common Pleas, yet he may ſue a *Quare non admiſit* in the King's Bench before himſelf.

E And ſo if a common Perſon do recover in a *Quare impedit* in the Common Pleas, and the Record is removed by a Writ of Error into the King's Bench, and there affirmed; then he ſhall have a Writ unto the Biſhop there, and ought to ſue *Quare non admiſit* againſt the Biſhop there upon the Record, otherwiſe not. After the Record removed by a Writ of (*a*) Error, the Plaintiff who recovered ſhall not have *Quare non admiſit* until the Judgment be affirmed in the King's-Bench.

F And the *Quare non admiſit* ought to be ſued in the County where the Biſhop refuſeth the Plaintiff's Clerk.

G And in the *Quare non admiſit* he ſhall recover only Damages, and ſhall not have his Clerk admitted by this Writ.

H And if the Biſhop hath admitted and inſtituted him, and the Archdeacon will not induct him; he hath no Remedy but only in the Spiritual Court, as it is ſaid; for it is a good Plea for the Biſhop to ſay, That he admitted the Clerk, and ſent his Letters unto the Archdeacon who will not induct him. And I conceive that if the Archdeacon refuſe to induct the Clerk, that the Clerk ſhall have an Action on the Caſe againſt the Archdeacon, becauſe the Induction is a Temporal Act. As if the Sheriff upon *Habere facias ſeiſinam* will not admit him into Poſſeſſion, he ſhall have an *Alias* and *Pluries*, (*b*) and Attachment againſt him. But ſome have ſaid, that he ſhall have a Citation againſt the Archdeacon in the Spiritual Court, and puniſh him there; for

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(*a*) One Defendant ſhall not have *Oyer* of the Record; *vide hic* 48. F. 16 *Ed.* 3. *Quare non admiſit* 3. But by *Hill*, if the Record be in another Place, the Juſtices ſhall ſurceaſe till they have inſpected the Record See accordant 17 *Ed.* 3. 55. by *Shard*, in a *Quare non admiſit* in the Rolls. For the Reverſal of the firſt Judgment is a Reverſal of the ſecond. See 26 *Ed.* 3. 35. *contra, & quære hic*, if it be a new Original. *Note* alſo 26 *Ed.* 3. 75. accordant.

(*b*) See 13 *Ed.* 3. *Quare non admiſit* 4. and 9 *Ed.* 3. *ibid.* 13. a *Quare non admiſit*, againſt an Official. *Alioquin Rex ſe capiet ad illum.*

perhaps he may alledge a ſpecial Cauſe, for which by the Spiritual Law he ought not to be inducted, which Cauſe cannot be determined in the Temporal Court. *Ideo quære.*

I And if the Vicar-general do refuſe to admit the Clerk, the *Quare non admiſit* ſhall be brought againſt the Biſhop for that Refuſal; and if the Biſhop do refuſe the Clerk, and afterwards dieth, *Quare non admiſit* is maintainable againſt the Guardian of the Spiritualities for this Refuſal made by the Biſhop. *Tamen quære.*

K (*a*) The Biſhop is not bounden to admit the Clerk, if the Church be full of the Preſentment of another Party who is not Party to the Recovery.

L If the Biſhop do refuſe the King's Preſentee, and doth afterwards admit him, yet the King ſhall have *Quare non admiſit* againſt him for that Refuſal; and ſo ſhall a common Perſon in like Manner have, as I conceive.

V. 21 H. 7. 3. A Man recovered in a Quare impedit, and had a Writ to the Biſhop, who returned, that the Clerk who was in had reſigned, and that the Church was full of the Preſentment of J. H. and upon that Return the Plaintiff had a Scire facias againſt the Biſhop: And after the Return the Opinion of the Court was, That he ſhould have Quare non admiſit.

M In a *Quare non admiſit* the Biſhop may ſay, that he did preſent for Lapſe.

N And *Quare non admiſit* was maintainable againſt the Biſhop's Official. *Mich.* 9 *Ed.* 3.

[48.] A If a Man do recover in a *Quare impedit* his Preſentment unto a Chapel which is donative, then I think that he ſhall have a Writ unto the Sheriff to put the Clerk who recovered into Poſſeſſion (*b*).

B And in a *Quare non admiſit* the Biſhop may ſay, That the Church is litigious betwixt two, *&c.*

C If a Man hath a donative Chantry, which is of the Nature that one name unto another his Clerk, and that the other ſhall inſtitute and induct him; there if he who hath the Nomination be diſturbed, he ſhall have a *Quare impedit*, and if he do recover, he ſhall have a Writ unto him who ought to inſtal and induct him, to put him in Poſſeſſion. But if he be diſturbed by him who ought to inſtal him, then he ought to have a *Quare impedit* againſt him: And after that he hath recovered, he ſhall have a Writ to him who diſturbed him, to put his Clerk into Poſſeſſion; or he ſhall have a Writ unto the Sheriff, to put the Clerk of him who recovered into Poſſeſſion, at his Election.

(*a*) And *Note*; The Biſhop ſhall be excuſed, if he return the (whole) Matter on the Writ, *ad admittendum Clericum*, whereupon the Party may have a *Quare non admiſit* againſt the Biſhop, to try the Truth of the Return, and alſo a *Scire facias* againſt the Incumbent to try his Title. 9 *Eliz. Dyer* 260. *a. Baſſet*'s Caſe. Alſo, if the Biſhop be inhibited by the Archbiſhop to admit the Clerk, he ſhall be excuſed, and a Writ ſhall iſſue to the Preſident of the Arches. *Parl.* 22 *Ed.* 3. *n.* 63.

(*b*) See 14 *H.* 4. 11. accordant, by *Hankf.* of a Free Chapel, which one has by the King's Grant.

Quare incumbravit.

D QUARE *incumbravit* (*a*) ought to be ſued in the County where the Church is, becauſe the Wrong is done here.

E And *Quare incumbravit* doth not lie but where the Plaintiff recovereth by Judgment of Court. And the King may ſue a *Quare incumbravit* in the King's Bench, although the Record of Recovery be in the Common Pleas; but a common Perſon cannot do ſo. 17 Ed. 3. 74.

F (*b*) And *Quare incumbravit* may be ſued in the Common Pleas, although the Record be removed in the King's Bench by a Writ of Error, or in the Treaſury; but if the Record be in the King's Bench, it ſeemeth then that the Party ſhall ſue the *Quare incumbravit* there, &c. 17 Ed. 3. 74. for all.

G And *Quare incumbravit* is an Original Writ, and ſhall iſſue out of the Chancery, and not out of the Common Pleas.

H And *Quare incumbravit* doth not lie until the Party hath ſued the Writ of *Ne admittas* (*c*) unto the Biſhop; for if the Biſhop do incumber the Church before the Writ of *Ne admittas* ſued, then the Party ſhall have a *Quare impedit*, and not *Quare incumbravit*; for the Biſhop cannot have Notice until the *Ne admittas* be delivered unto him. And if the (*d*) Biſhop, after the *Ne admittas* delivered unto him, do admit his Clerk for whom it is found by the *Jure Patronatus*, yet the other Party ſhall have *Quare incumbravit* againſt him. Ante 35. G.

I (*e*) And in *Quare incumbravit* he ſhall have Judgment to recover Damages, and alſo his Preſentment. But ſo ſhall he not have in *Quare non admiſit*, but only Damages.

(*a*) *Per Thorp.* If the Biſhop incumber where no Debate or Diſpute is, yet this Writ lies. 17 *Ed.* 3. 74. *b.* 21 *Ed.* 3. *Quare incumbravit* 3. and ſo by *Wilby*, if the Biſhop incumber within the ſix Months, though no Plea be pending, 18 *Ed.* 3. 17. *b.* which was admitted by *Hill* and *Pole*, and that there ſhall be a ſpecial Count, and not of a Recovery.

(*b*) In a *Quare incumbravit*, *per Thorp* & *Green* adjudged. 1. That one ſhall have *Oyer* of the Record. 2. That one ſhall have this Writ before Judgment. 3. That the Writ ſhall be returnable in the ſame Court where the original Judgment was given. 4. Where the Writ ſuppoſes the Plea pending touching the Church, it is good. 5. That the Writ ſhall not make Mention of the Place where the Recovery was had. 6. It need not mention whether he incumbered within or after the ſix Months, but that ſhall come by way of Anſwer. 7. If one recover within the ſix Months, and the Biſhop incumbers, he ſhall have a *Quare incumbravit* within the ſix Months. 8. It is no Plea that the Record is removed by Error. 17 *Ed.* 3. 50, 54, 74, or that he has received the Plaintiff's Clerk at his Nomination. 21 *Ed.* 3. 3. *a.*

(*c*) *Note*; The Iſſue in that Caſe ſhall not be on the Day that the Prohibition was delivered, but whether he received the Clerk before the Prohibition delivered or not. 19 *Ed.* 3. *Quare incumbravit* 2.

(*d*) See accordant 19 *Ed.* 3. *Quare incumbravit* 2. 18 *Ed.* 3. 17. And the Reaſon is becauſe the Patron need not ſhew the Right of Patronage to be in him, for the *Ne admittas* with the Recovery gives him the Action, tho' he be not the true Patron. See 8 *R.* 2 *Quare impedit* 199. a *Quare impedit* lies in ſuch Caſe, although he has not preſented to the ſame Avoidance. 17 *Ed.* 3. 75. Alſo the Plaintiff need not count that the Biſhop refuſed his Clerk, for the *Incumbravit* is a Refuſal. 18 *Ed.* 3. 17. *b.*

(*e*) See 21 *Ed.* 3. 3. accordant; but his Temporalties ſhall not be (ſeized) at Common Law.

(*a*) And in 21 *Ed.* 1. it was adjudged, That a Man ſhall have a *Quare incumbravit* without making Mention of any Recovery in the Writ, or in the Count. But by the Rule of the Regiſter he ought to mention the Recovery; 34 H. 6. 39. and that ſeems to be the better Opinion. K

(*a*) And after the *Ne admittas* delivered, if the ſix Months paſs, the Biſhop may preſent his Clerk for Lapſe, and ſhall not be charged by the *Quare incumbravit* for that Preſentation; but it ſeemeth he cannot admit the Clerk of the other Man after the ſix Months paſt, for that ſhall be againſt the Writ of *Ne admittas* delivered unto him. And alſo if the Biſhop do preſent the Clerk of the other Party after the ſix Months, who had preſented unto him before, that Preſentment maketh Title to the Party, although it be after the ſix Months; by which it ſeemeth that the *Quare incumbravit* lieth then for the Party. L

M. vide accordant 19 Ed. 2. Quare incumbravit 2.

And if the Plaintiff be Nonſuit in *Quare incumbravit*, he may ſue a new *Quare incumbravit*, and may vary from his Count upon the firſt Writ. M And it is a good Iſſue, that he did not incumber, *&c.* after the Prohibition delivered unto him. N

And if a Man hath a *Quare impedit* depending, and he ſue a *Ne admittas* to the Biſhop, and afterwards the Biſhop do incumber the Church within the ſix Months with his Chaplain, or with the Defendant's Chaplain, then the Plaintiff ſhall have *Quare incumbravit*; and the Form of the Writ ſhall be ſuch: O

The King to the Sheriff of Lincolnſhire, *greeting: If* A. *ſhall make you ſecure,* &c. *then ſummon* H. *Biſhop of* Lincoln, *that he be before our Juſtices,* &c. *to ſhew wherefore, when the ſame* A. *in our Court* (*b*) *before the Juſtices aforeſaid, by the Conſideration of our Court aforeſaid, had recovered his Preſentation to the Church of* I. *againſt* B. *yet the ſame Biſhop, pending the Plea in the aforeſaid Court before the before-mentioned Juſtices, hath incumbred the ſame Church, to the no little Damage and Grievance of him the ſaid* A. *and contrary to the Law and Cuſtom of our Realm: And have you there,* &c. *Witneſs,* &c.

And if he do not appear at the Return of the Writ of *Incumbravit*, nor at the *Alias*, then the *Diſtringas* ſhall be in the End, *In manifeſt Contempt of us and our Commands, and to the manifeſt Weakening the Conſideration of our Court: And have there,* &c. P

(*a*) A *Quare incumbravit* was brought by the Tenant of one *Audley* againſt the Biſhop of *Exeter*, and counted that the Church avoided the 13th of *April*, by the Death of *I. S.* and that Debate aroſe between him and *William Champernoon*, and that the Plaintiff recovered in a *Quare impedit*, and that pending that Suit, he delivered to the Biſhop a Prohibition at ſuch a Place, and that the Biſhop incumbered within the ſix Months; the Biſhop pleads and ſhews, that the *Quare impedit* bore Date the 9th of *April*, and ſo was brought in Wrong to the Incumbent; *ſed non allocatur*. For ſuppoſe it was brought, living the Patron, if the Parſon dies pending the Plea, and the Biſhop incumber it, and afterwards the Plaintiff recovers, a *Quare impedit* lies. Whereupon the Biſhop taking no Notice of the Prohibition ſerved on him, pleads, that the Church had been void twelve Months, and that ſix Months paſſed before the Recovery, whereby the Biſhop preſented as Ordinary, *abſque hoc*, that he incumbred within the ſix Months, and reſolved that what is ſaid of the Time of the Avoidance ſhall not go to the Incumbrance; wherefore *Pole*, *&c.* took Iſſue, whether he incumbred within ſix Months after the Avoidance, *&c.* 18 *Ed.* 3. 17.

(*b*) And *Note*; This Writ has been adjudged good, without ſaying before what Juſtices he recovered. 18 *Ed.* 3. 17. in the Caſe *ſupra* of *H. de Audley*.

Q And if a Man hath a Writ of Right of Advowſon depending betwixt him and another, and the Church void pendent the Writ, the Plaintiff ſhall not have *Ne admittas* to the Biſhop, nor the Writ of *Quare incumbravit*, although the Biſhop incumber the Church; for the Demandant ſhall not recover the Preſentment upon this Writ, but the Advowſon; and if he hath Title to preſent, he may preſent, and have a *Quare impedit*, if he be diſturbed.

Juris utrum.

R JURIS *utrum* is a Writ of the higheſt Nature that a Parſon can have; and he ſhall have this Writ where the Lands or Tenements are aliened by his Predeceſſor, or if a Recovery be had againſt the Predeceſſor by Default, or by Reddition, or for Want of Pleading of the Predeceſſor, where he hath not prayed in Aid of the Patron and Ordinary. But if he do pray in Aid of the Patron and Ordinary, and they join in Aid, and render the Land, or confeſs the Action, then the Succeſſor of ſuch a Parſon ſhall not have this Writ againſt that Recoveree: And alſo if a Man recover by Action tried againſt a Parſon's Lands or Tenements, by Verdict, and the Parſon doth not pray in Aid of the Patron and Ordinary, yet his Succeſſor ſhall have a *Juris utrum*, and ſhall not be put to a Writ of Attaint. *Poſt.* 50. D.

[49.]

19 H. 40. Forteſcue.

If Annuity be recovered againſt a Parſon, his Succeſſor ſhall not have Juris utrum upon that Recovery, for that nothing is taken out of the Poſſeſſion of his Succeſſor; but a Charge only upon the Succeſſor which ſhall bind him.

A And if a Man intrude into Lands and Tenements after the Death of a Parſon, the Succeſſor ſhall have this Writ of *Juris utrum:* And ſo if a Parſon be diſſeiſed of Lands and Tenements, Parcel of his Rectory, and dieth, his Succeſſor ſhall have a *Juris utrum* (*a*).

B And alſo a Parſon may have an Aſſiſe of Lands or Tenements of his Rectory, or a Writ in the *Quibus*, in the Nature of an Aſſiſe, or a Writ of *Entry* in the *Per* or *Cui*, or in the *Poſt*, upon a Diſſeiſin made to himſelf, but not upon a Diſſeiſin made to his Predeceſſor, but ſhall be put to ſue a *Juris utrum*, &c. 20 *Ed.* 3. *Juris utrum* 5.

C Alſo a Parſon may have a *Ceſſavit*, if his Tenant who holdeth of him ceſſeth, &c. or a Writ of Eſcheatry, if his Tenant die without Heir. And by the Statute of *Weſt.* 2. he may have *Quod permittat* of common Paſture. Vide 57. e.

D And if a Parſon with the Aſſent of the Patron and Ordinary leaſeth his Glebe Lands for Life, and the Tenant alieneth in Fee, or loſeth by Default; it ſeemeth the Parſon who leaſed the Land ſhall have a *Conſimili caſu* during the Life of the Tenant for Life; and after the Death of the Tenant for Life, a Writ of *Entry ad communem Legem*. Vide 50. H.

E And if an Abbot or Prior be Parſon imparſonee of a Church, and alieneth the Land of the Rectory, his Succeſſor ſhall have a *Juris utrum* to recover the Land, and not other Writ, becauſe he ſhall have that as Parſon.

(*a*) See 26 *H.* 8. 3. 33 *Ed.* 3. *Ayd del Roy* 163.

F And if a Man leaſeth Lands unto one for Life, and afterwards granteth the Reverſion by Licence unto a Parſon and his Succeſſors, and the Tenant attorneth, and after the Tenant for Life loſeth the Land by Default, or alieneth in Fee; the Parſon ſhall have a Writ *de conſimili caſu* during the Life of the Tenant for Life, and after his Death he ſhall have a Writ of *Entry ad communem Legem, &c.*

G And if a Parſon loſe by Action tried, or loſeth by Default, his Succeſſors ſhall have a Writ of Error or Attaint.

H And if a Reverſion be granted unto a Parſon and his Succeſſors by Licence, he ſhall have a *Quid juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parſon and his Succeſſors, he ſhall have a *Per quæ ſervitia:* And ſo of a Writ of *Quem redditum reddit, &c.*

I And ſo if a Parſon be Tenant in Common of a Wood, or other Land, in the Right of his Church with another, and the other Tenant do Waſte in the Wood, or Land, *&c.* the Parſon ſhall have a Prohibition; and if he do Waſte, he ſhall have a Writ of Partition, and the Place waſted ſhall be aſſigned to the other Party by the Statute of *Weſt.* 2. *cap.* 22. But if a Parſon be Patron of a Vicarage, and the Vicarage void, and a Stranger doth preſent, the Parſon ſhall have a *Quare impedit* or *Darrein Preſentment:* But if the ſix K Months paſs, he ſhall have a Writ of Right of Advowſon, becauſe that that Writ is given only for him who hath the intire Fee and Right in him, and the Parſon hath not the ſame; for the Right is in the Patron and Ordinary.

Cap. 11. Par. 49.

L Nor ſhall a Parſon have a Writ of Right *Sur diſclaimer*, nor a Writ of Cuſtoms and Services, nor an *Injuſte vexes*, nor ſuch Writs as are grounded upon the mere Right. But it ſeemeth he may have *Contra formam Collationis*, or *Feoffamenti*, and a Writ of *Meſne*, and *ad Terminum qui præteriit, &c.* and ſuch Poſſeſſory Writs which are grounded upon the mere Right.

20 Ed. 3. Juris utrum, &c. Old N. 125. contra.

M And a Parſon or a Vicar ſhall have a Writ of *Juris utrum* againſt thoſe who are ſeveral Tenants; and then the Form of the Writ ſhall be ſuch:

(*a*) *The King to the Sheriff of* S. *greeting: If* L. *Biſhop of* London, *Parſon of the Church of* E. *ſhall make you ſecure*, &c. *then ſummon twelve free*, &c. *of the Neighbourhood of* E. *that they be before our Juſtices at* Weſtminſter *ſuch a Day, ready by Oath to recognize, whether twenty Acres of Land with the Appurtenances in* E. *be Frankalmoign belonging to the Church of him the ſaid* L. *or the Lay Fee of* A. B. C. *and* D. *and in the mean time let them view that Land, and ſummon*, &c. *the aforeſaid* A. *who holds two Acres thereof*, B. *who holds eight Acres thereof*, C. *who holds five Acres and one Rood thereof, and* D. *who holds four Acres and three Roods thereof, that they be then*, &c.

(*a*) This Writ ſeems intended of an Appropriation, and not of a Commendam, and ſeems maintainable in, *&c.* 29 *Ed.* 3. 11.

And in this Writ it is no Plea for the Tenant to ſay, that he is Parſon of the Church of *D.* and that this is the Freehold of his ſaid Church, (Judgment *de Breve*) for the Plaintiff (Court) cannot take Notice thereof, (or join Iſſue thereupon). 3 *Ed.* 2. *Brief* 785.

O And two Prebendaries may be one Parſon in one Church, and then they
ſhall join in a *Juris utrum*; and their Writ ſhall be ſuch:
If W. *Prebendary of the Prebend of* N. *and* R. *Prebendary of the Prebend of*
I. *in the Church of the bleſſed* Peter *of* York, *Parſon of the Church* (*a*) *of* A.
annexed to the Prebends aforeſaid, ſhall make you ſecure, &c. *then ſummon twelve*,
&c. (as laſt above).

P And where a Man is Parſon of the Moiety of the Church, and another
Clerk is Parſon of the other Moiety of the ſame Church, then one may have
a *Juris utrum*, and the Writ ſhall be ſuch:

Q *If* W. *Parſon of the Moiety of the Church of* N. *ſhall make you ſecure*, &c.
then ſummon twelve, &c. *by Oath to recognize whether*, &c. *be Frankalmoign
belonging to the Moiety of him the ſaid* W. *of the Church aforeſaid, or Frankalmoign
belonging to the other Moiety of* R. *Parſon of the other Moiety of the
Church aforeſaid*, &c. And Dean and Chapter may have *Juris utrum* in ſpecial
Caſe where they are Wardens of a Chantry, thus:

R *The King to the Sheriffs of* London, *greeting: If the Dean and Chapter of the
Church of Saint* Paul, London, *Guardians of the Chantry at the Altar of the
bleſſed* Mary *in the Church of Saint* Paul, London, *ordained for the Soul of*
Richard D. *ſhall make you ſecure*, &c. *then ſummon*, &c. *of the Neighbourhood* [50.]
of the City of London, *that they be before our Juſtices at* Weſtminſter *ſuch a
Day*, &c. *whether twenty Shillings Rent, with the Appurtenances in the Suburbs
of* London, *be Frankalmoign belonging to the Chantry of them the ſaid Guardians
at the Altar aforeſaid, or the Lay Fee of*, &c. *and in the mean time let them
view the Tenements whereof the Rent iſſueth*, &c. *Witneſs*, &c.

A Where a Parſon alieneth the Right of his Church with Warranty, and afterwards
the Alienee is impleaded, and voucheth the Parſon, who entereth 40 Ed. 3. 27.
into the Warranty, and loſeth by Action tried, his Succeſſors ſhall have a *Juris utrum* 2 H. 4. 2. *Quære.*
of the Seiſin of his Predeceſſor, which he had before the Alienation. 11 H. 4. 13.
B And a Vicar ſhall have a *Juris utrum* againſt the Parſon for the Glebe of his 14 Ed. 3. Juris utrum 19.
C Vicarage, which is Parcel of the ſame Church. (*b*) If a Parſon receive Rent
or Fealty of the Tenant of the Land, which is aliened by his Predeceſſor, he 7 Eliz. Dyer
ſhall not, during his Life, have a *Juris utrum*; but his Succeſſors ſhall have 239, 240. 22 H. 8.
Juris utrum. B. Accept. 14.

D If a Writ of Right be brought againſt a Parſon, who joineth the Miſe 2 Ed. 6.
without praying in Aid of the Patron and Ordinary, and afterwards loſeth by B. Accept. 20.
Default, his Succeſſor ſhall have *Juris utrum*. Otherwiſe it is if he loſeth the
Land by Verdict, as it ſeemeth.

E If a Parſon have a Chapel annexed to his Parſonage, to which Chapel Glebe
is appurtenant, the Parſon ſhall have *Juris utrum* of the ſame.

F A Recovery in a *Ceſſavit* againſt a Parſon by Default ſhall not bar his Succeſſor,
but he muſt have a *Juris utrum* againſt him who recovered.

(*a*) See the like Clauſe, *Rot.* 26 *Ed.* 1. *M.* 10. *dorſo, Eccleſia de Ayrmir ſpectan' ad Prebendariam de Grendale & Worſhill, Diœceſ.* Exon. See *Co. Lit.* 18. *a.*

(*b*) See 8 *H.* 5. 10. 2 *H.* 4. 5. 32 *H.* 8. *Acceptance* 14. *Contra* of a Leſſee for Years. 11 *H.* 4. 25. See alſo 8 *Ed.* 3. 29. *ante* 49. I.

G If a Chaplain of a Chantry loſe the Lands of his Chantry by an Aſſiſe of *Novel Diſſeiſin*, yet he himſelf ſhall have a *Juris utrum*, becauſe that is a Writ of Right; and the Writ is to inquire, *Whether it be Free Alms of the Chantry or Lay Fee*, &c. *H.* 1 *R.* 2.

1 Ed. 1. Quod permittat 9. 32 Ed. 1. Comment. 24.

H The Parſon or Vicar ſhall have a *Quod permittat* in the *Debet* only, of his own Seiſin or of the Seiſin of his Predeceſſor; and may have that *Quod permittat* in the Nature of an Aſſiſe of *Mortdaunceſter*, upon the dying ſeiſed of his Predeceſſor.

I In a *Juris utrum* the Plaintiff ought to be named Parſon or Vicar, or ſuch Name in Right of which Name he bringeth his Action: For if Abbot or Biſhop, or a Dean, bring a *Juris utrum*, by reaſon of any Land which is Parcel of the Rectory annexed to the Biſhoprick, or appropriated unto the Abbey or Deanry, they ought to be named Parſons of the Church in the Writ.

K In a *Juris utrum*, if the Tenant at the firſt Day do make Default, Reſummons ſhall be awarded; and if he make (*a*) Default again at the Summons returned, then the Jury ſhall be taken. L (*b*) And the Tenant ſhall plead in a *Juris utrum*, as the Tenant ſhall plead in Aſſiſe of *Novel Diſſeiſin*, *ſcil.* two or three Dilatories to the Writ; and if it be not found, then to pray the Jury to inquire of the Points of the Writ (*c*).

M And where the *Juris utrum* is brought againſt ſeveral Tenants by ſeveral Summons in the Writ, it may be taken againſt one only for that Parcel, and afterwards againſt the others. But it is otherwiſe in an Aſſiſe of *Novel Diſſeiſin*, if it be not in ſpecial Caſes.

Writ of Conſultation.

See Prohibition. See the Stat. De circumſpecte agatis, 13 Ed. 1. Raſtal, Prohibition 3. 37 H. 6. 9. Aſhton.

N IF the Biſhop cite any of the Pariſhioners of the Church to be contributory unto the Reparations of the Pariſh Church, (*d*) or of any Chapel annexed thereunto, if the Party who ſueth the Prohibition directed unto the Biſhop, ſuppoſe that he is impleaded of a Lay Fee in the Spiritual Court, the Biſhop ſhall have a Conſultation upon the Matter ſhewed in the Chancery, on the Part of the Biſhop.

O And ſo if a Man obtain any Judgment or Sentence in the Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will ſue a Prohibition for to delay the Execution of the Judgment, the Party ſhall have a Conſultation.

P And if any Chaplain of the King's free Chapels keepeth any Concubine, then the Biſhop may cite him before him for to puniſh him: And if the Chaplain purchaſe a Prohibition, becauſe the King's free Chapels ought not

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(*a*) And therefore he ſhall not be eſſoined at the Reſummons. 11 *Ed.* 3. *Eſſoin* 4.

(*b*) See 11 *Ed.* 3. *Juris utrum* 2. 40 *Ed.* 3. 29.

(*c*) See 17 *Ed.* 3. 48. accordant, *per Thirn.* But *Note* there, in a *Juris utrum* againſt *A.* and *B.* by ſeveral Summons, nothing was done againſt *A.* but the Jury was taken againſt *B.* only, and found for the Demandant; but *Stone* would not give Judgment.

(*d*) See the *Regiſter* 44. accordant.

to be viſited by the Biſhop; yet upon the Matter ſhewed the Biſhop ſhall have a Conſultation to proceed to correct him by Pain corporal, and not pecuniary.

Q If a Prior and Convent ſue in the Spiritual Court, for Tithes and Mortuary, *J.* Parſon of the Church of *C.* and an Abbot cometh into the Chancery, and ſurmiſeth that *J.* holdeth the Church of his Patronage, and that the Prior, *&c.* claimeth the third Part of the Church of his own Advowſon and Patronage, and prayeth an *Indicavit*, and the ſame is granted; now the Prior, *&c.* may ſhew this Matter in the Chancery, and have a Conſultation, becauſe that in the Statute of *Articuli Cleri* it is contained, that in Diſmes and Mortuaries, when under theſe Names they are propoſed, there is no Room for our Prohibition.

See Articuli Cleri, cap. 1.

R If a Prior ſueth in the Spiritual Court for the Moiety of the Tithes of four Plough-Lands, which he claimeth as appertaining unto the Church of *N.* whereof he is a Parſon imparſonee, which are not of the Value of the fourth Part of the Church, if the other purchaſeth an *Indicavit*, ſurmiſing that they are of the Value of the fourth Part; he who is ſued in the Spiritual Court ſhall have a Conſultation to proceed, *So that nothing be done touching the Advowſon of any Part of the Church, the ſaid Prohibition notwithſtanding.*

S If a Man promiſe unto another with his Daughter in Marriage ten Pounds, by reaſon whereof the Party marrieth his Daughter, if he who promiſeth the Money will not pay the Money, he ſhall be ſued for the ſame in the Spiritual Court; and if he purchaſe a Prohibition, the other ſhall have a Conſultation: And if he who promiſeth the Money dieth, yet the Husband who married his Daughter may ſue the Executors for that Money, or the Executor of his Executors, in the Spiritual Court.

V. ant. 44. A.
14 Ed. 4. 6.
17 Ed. 4. 6.
Com. 309.
20 Ed. 4. 3.
[51.]

A And if any of the Pariſhioners do diſturb any Parſon or Vicar to carry his Tithes by the uſual Ways and Paſſages, the Parſon may ſue in the Spiritual Court for this Diſturbance; and if the other ſue a Prohibition, upon the Matter ſhewed he ſhall have a Conſultation.

B If a Parſon or Vicar have a Penſion out of another Church, and the Penſion is kept from them, and another Parſon taketh and claimeth the ſame; the Parſon or Vicar who ought to have the Penſion may ſue for the ſame in the Spiritual Court. And ſo if a Parſon or Vicar, or Maſter of an Hoſpital, ſue for a Penſion in the Spiritual Court, which they and their Predeceſſors have had Time out of Mind, *&c.* if the other Party purchaſe a Prohibition, upon the Matter ſhewed he ſhall have a Conſultation: And yet it ſeemeth, that upon the Preſcription he may maintain a Writ of Annuity at the Common Law, but the ſame is in his Election. (*a*) But if he once ſue a Writ of Annuity at the Common Law for the ſame, and declare there upon the Preſcription, then he ſhall not afterwards ſue in the Spiritual Court for that An-

Penſion.
See the Stat. 34 H. 8. c. 19.

(*a*) See 2 *Inſt.* 491. That it is only ſuable at Common Law, yet in *Levinz's Reports* 62 and 113. it is ſaid by *Twiſden* Juſtice, that the Plaintiff hath his Election, to which the Court inclined. *Paſ.* 23 *Car.* 2. *B. R.* and yet in *Paſ.* 15 *Car.* 2. *B. R.* *Windham* cited a Caſe, 11 *Car.* 1. in *B. R.* where *Coke* held the Law to be contrary, and *Fitz.* Opinion denied.

nuity in the Name of a Penſion; and if he do, it ſeemeth the Party may have a Prohibition againſt him.

38 H. 6. 19. And a Parſon may ſue in the Spiritual Court a Spoliation againſt another C for taking of his Tithes, or for taking of any Penſion which doth appertain to his Church, although they claim by ſeveral Patrons, and of their ſeveral Preſentments: But this is intended only where the Tithes and Profits taken Vide 36. A. and ſpoiled do not amount unto the fourth Part of the Value of the Church; for if they claim by ſeveral Patrons, and the Tithes, Profits or Penſions amount unto the fourth Part of the Church, then the Party grieved ſhall have an *Indicavit*, becauſe the Title of the Patronage doth come in Debate, 18 H. 6. 19. *&c.* But if they claim by one and the ſame Patron, and of his Preſentment, then one Parſon ſhall have a Spoliation in the Spiritual Court againſt the other, although the Profits do amount unto a fourth Part, or a third Part, or the Moiety of the Church, becauſe the Title of the Patronage comes not in Debate; and if a Prohibition be ſued thereupon, the Party ſhall have Conſultation.

For where the Title of the Patronage is in Queſtion, there is no Spoliation.

If a Man have his Sheep lying and feeding for one Year in a Pariſh, the D Parſon of the Pariſh may ſue in the Spiritual Court for Tithe of Wool of thoſe Sheep; and if the Party ſue a Prohibition, he ſhall have a Conſultation.

And note, That Conſultation ſhall be granted and directed to the Party E himſelf who ſued in the Spiritual Court, that he do not proceed in his Suit there; and alſo he may have a Conſultation directed unto the Judge, commanding him to proceed there, notwithſtanding the Prohibition aforeſaid.

And the Parſon may ſue the Executors of his Predeceſſor in the Spiritual F Court for the Dilapidations, and for that Sum of Money which is found by the Inqueſt charged by the Biſhop or Ordinary, that the Dilapidations do amount unto, to pay the ſame: And if the Executors ſue a Prohibition, the Party who ſued in the Spiritual Court ſhall have a Conſultation directed to the ſame, *&c.* to proceed; and another Conſultation directed to him to ſue as before.

And if a Man doth detain his Tithes for his Sheep, which are in the Pa- G riſh, and there feeding for Half a Year, if he die, the Parſon may ſue his Executors for theſe Tithes in the Spiritual Court, and ſhall have a Conſultation, if the Executors ſue a Prohibition. Preſcription. And the Parſon by Preſcription may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Pariſh from the Feaſt of the Holy Trinity unto the Feaſt of Saint *Peter*, which is ſaid *ad Vincula*; *And the Tithes of Wool forth coming of the Sheep of his Pariſhioners, killed and dying from the Feaſt of Saint* Michael *to the Feaſt of the Paſſover, every Year*; *and the Tithes of Honey and Wax forth coming of the Bees and Bee-hives within the Limits of his Pariſh*; and may ſue for them in the Spiritual Court, and ſhall have a Conſultation, if he be diſturbed by Prohibition.

And a Man may ſue in the Spiritual Court for a Legacy: Where a Man H deviſeth *Fabricæ Eccleſiæ* twenty Shillings, *&c.* the Parſon may ſue the Executors for the ſame in the Spiritual Court, *&c.* and may ſue the Executors in the Spiritual Court for the Tithes of Mills due by the Teſtator in his Life-time. And ſo a Vicar may ſue in the Spiritual Court for the Tithe of Beans and Oats, ariſing within certain Limits within his Pariſh. And ſo he may ſue *for Tithes of Pannage forth coming of his Wood, and for Foals forth coming of his Stud or Breed of Horſes, and for Butter, Cheeſe, and Meats made of Milk in Winter-time.* But it ſeemeth the ſame ought to be by Preſcription. And it was agreed before the King's Council in the Parliament holden at *Saliſbury, That Conſultations ought to be for Tithes of Wood uſed to be cut, notwithſtanding ſuch Tithes are not yearly renewed.*

I (*a*) A Man may ſue in the Spiritual Court, where another Man doth defame him as a Falſifier, an Adulterer, or an Uſurer, *&c.* See *Poſt.* 53. F. 27 H. 8. 13.

K And a Parſon, or other Prieſt, may ſue in the Spiritual Court for laying violent Hands upon him, *&c.* to have him (*b*) Excommenge, or to have corporal Puniſhment, but not to have Amends there. 12 H. 7. 23. per Conſtable. 11 H. 4. 88. 7 H. 4. 1.

[52.]

L Where a Prior ſueth a Parſon in the Spiritual Court *for two Portions of Tithes forth coming* of the Demeſnes of *F.* whereof the Parſon hath ſpoiled the ſaid Prior, for which the Parſon purchaſeth an *Indicavit* in the Chancery, ſurmiſing that the Tithes do amount unto the fourth Part of the Value of his Church, and that the King is Patron thereof, by reaſon of the Wardſhip of an Infant in the King's Hands, by reaſon whereof the Prior cometh into the Chancery, and ſheweth there that the Tithes do not amount unto the fourth Part of the Value of the Church, and hath a Writ directed unto the Biſhop to certify the King into the Chancery the Value of the Church which the Parſon holdeth, and the Value of the Tithes demanded by the Prior: If the Biſhop by his Letters certify for the Prior, then the Prior ſhall have a Conſultation. And ſo it ſeemeth by this Writ, that where an *Indicavit* is ſued, *&c.* the King ſhall be certified by the Biſhop's Letters upon a Writ directed to the Biſhop what is the Value of the Church, and alſo what is the Value of the Tithes demanded in the Spiritual Court, before a Conſultation ſhall be granted: And it ſeems to be a good Rule, and a good Order, ſo as no Party ſhall be deceived: And this Certificate of the Biſhop ſhall bind the Party to ſay or aver any Thing againſt it. But a Conſultation ſhall be granted upon the Certificate returned, *&c.* but notwithſtanding that, if it be unto the fourth Part of the Value of the Church, the Party may ſue a Writ of Right of Tithes, *&c.*

11 H. 4. 48. So if the Biſhop certify that J. S. is utlage, or in Priſon at the Time of the Utlagary, 15 Ed. 3. Utlagary 2. Brev. Eſtoppel 211.

(*a*) *Note*; The Offence in this Caſe ought to be merely Spiritual. 22 *Ed.* 4. 10. 2 *Ed.* 4. 10.

(*b*) See accordant 7 *H.* 4. 1. *Si non de Violata pace noſtra, ſed de Excommunicatione noſtra ad correctionem animæ tantummodo agatur. Regiſter* 49. *b.* See 11 *H.* 4. 88. *a. per Thirning.* Where the Defendant in Attachment on a Prohibition pleads that he was a Clerk, and had Tonſure, and that the Plaintiff beat him, and that he the Defendant ſued in Court Chriſtian, only to inform the Court, that the Plaintiff had offended againſt Holy Church, without ſuing in any other Manner.

A If a Biſhop make an Order, That the Parſon of ſuch a Church ſhall yearly pay unto the Abbot of *B.* and his Succeſſors two Parts of the Profits of the Church in the Name of a yearly Penſion, and that the Parſon, before he have Poſſeſſion of the Church, take an Oath ſo to do, for which the Parſon ſueth in the Court of *Rome*, and obtaineth a Delegacy directed unto the Biſhop and his Officers, to repeal the Order, *&c.* Now if the Abbot ſueth a Prohibition upon this Matter, the Parſon ſhall have a Conſultation.

B If a Lay-man will not make his Offerings at Days limited to the Pariſhioners to offer, or will not confeſs himſelf unto his Curate, or receive the Sacrament of our Lord Jeſus Chriſt of his Curate, by reaſon whereof the Curate citeth and ſueth him in the Spiritual Court for the ſame: If he purchaſe a Prohibition, *&c.* upon ſhewing the Matter a Conſultation ſhall be granted.

See for their Capacity at the Common Law, 11 H. 4. 12. 7 H. 6. 30. 12 H. 27. 8 Ed. 4. 6. 12 H. 7. 22.

C If the Churchwardens of any Church have uſed Time out of Mind to receive yearly of one of the Tenements of the Pariſh a Pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuſeth to pay this Wax, *&c.* there the Churchwardens may ſue in the Spiritual Court for the ſame: And if he obtain a Prohibition, Conſultation ſhall be granted.

If a Man be condemned in the Spiritual Court in a Cauſe of Defamation, D
for which he appealeth unto the Court of *Canterbury*, *&c.* and there the Sentence
is confirmed, and the Party condemned in twenty Shillings for Coſts,
and the Cauſe remitted unto the Judges before whom it was firſt commenced,
by reaſon whereof he who is condemned ſueth a Prohibition; the other
Party ſhall have a Conſultation. If a Parſon doth detain from the Pariſhioners E
the Goods of the Church, and in his Will he enjoineth his Executors to deliver
them unto the Pariſhioners; the Pariſhioners may ſue the Executors in
the Spiritual Court for them; and if they ſue a Prohibition, the Pariſhioners
ſhall have a Conſultation; and this Conſultation may be ſued by any of the
Pariſhioners who will ſue in the Spiritual Court. If the Biſhop or his Official F
cite any Man for laying violent Hands upon any Clerk, *&c.* if he ſue a Prohibition,
See 51. K. the other may have a Conſultation; *Provided the Spiritual Court act*
only touching corporal and not pecuniary Puniſhment, &c.

G If a Man in time of the Vacancy of a Parſonage or Vicarage will not pay his Tithes, and the Ordinary *ex Officio* cite him to pay them, *&c.* if he purchaſe a Prohibition, the other ſhall have a Conſultation granted unto him.

H If an Abbot and Convent are bounden, by reaſon of any Ordinance lawfully made, to find four Chaplains to ſing in ſuch a Church or Chapel for the Souls of ſuch or ſuch, and if they fail to find them, they bind themſelves in divers Pains and Cenſures; and if they fail in all or in Part to find theſe Chaplains, they have granted that the Dean of *Saliſbury*, or his Official, ſhall interdict their Church, and ſo hold it until they have ſatisfied, *&c.* for which the Dean or his Official, *ex Officio*, cite the Abbot and Convent to find the ſaid Chaplains, *&c.* if they ſue a Prohibition, the Dean or Official ſhall have a Conſultation in that Caſe.

I If the Ordinaries do forbid the Friars, that they ſhall not hear Confeſſions, nor they ſhall not admit any one to be buried in their Church, and ſue them in the Spiritual Court for that Cauſe; if the Friars purchaſe a Prohibition, the Ordinaries ſhall have a Conſultation.

K If a Man ſueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other ſue a Prohibition for the ſame, he ſhall a Conſultation, foraſmuch as for Reſtitution of his Wife only he ſued, &c. And yet he may have an Action at the Common Law, *de Uxore abducta cum bonis Viri*, or an Action of Treſpaſs for taking the Wife, as it ſeemeth. See 51. I.

L And a Parſon ſhall ſue for a Penſion of forty Shillings in the Spiritual Court, whereof the Houſe hath been ſeiſed Time out of Mind, and ſhall have a Conſultation thereupon, if a Prohibition be ſued, &c.

M If a Man recover in the Spiritual Court in a Cauſe of Defamation, Coſts, he ſhall ſue there for the Coſts; and if the other ſue a Prohibition, he ſhall have a Conſultation.

[53.]

A And if a Man have corporal Puniſhment in the Spiritual Court for a Cauſe of Defamation, or for laying of violent Hands upon a Clerk, &c. if the Party will redeem his Penance, and promiſe to pay unto the Party a certain Sum for his Damages, &c. if after he will not pay the Money unto the Party, the Party damnified may ſue for the ſame in the Spiritual Court; and if the other Party purchaſe a Prohibition, he ſhall have a Conſultation. 12 H. 7. 22.

B If a Parſon for an Offence have Judgment to be deprived in the Spiritual Court, and the Patron doth preſent another Parſon unto the Ordinary, who ſueth the firſt Parſon in the Spiritual Court, becauſe he will not void the Church, but defend himſelf by Appeals, or other Matters, &c. now if the firſt Parſon purchaſe a Prohibition, the other may ſue a Conſultation; or without any Prohibition ſued by the firſt Parſon, the Parſon may ſue a Writ in the Chancery unto the Spiritual Judge, to proceed in the Spiritual Court upon the Cauſe of Deprivation and Diſability.

C Upon a Legacy given to any Order of Friars, they may ſue the Executors in the Spiritual Court for the ſame. And if the Executors purchaſe a Prohibition, they may have a Conſultation upon the Matter ſhewed, &c.

D If Friars, or other Perſons whatſoever, ſue in the Spiritual Court for a Legacy, and have Proceſs againſt others as Witneſſes in that Cauſe; if the Witneſſes will ſue a Prohibition, ſurmiſing that they are ſued againſt their Wills *ex Officio Judicis*, in the Spiritual Court, &c. yet he or they to whom the Deviſe is made ſhall have, upon the Matter ſhewed, a Conſultation.

And note, That the Juſtices of the King's Bench may grant a Conſultation of Tithes as well as the Chancellor.

And when the Juſtices grant a Conſultation of Tithes of Spoliation, they make the Libel indorſed in ſuch Manner:

The Lord the King hath not Cognizance touching Spoliation of Tithes, in the Eccleſiaſtical Court, foraſmuch as it may not be litigated there touching the Right of Patronage or the Advowſon of Tithes. And ſo they give no Power by the Indorſement; and the Rule in the Regiſter is by thoſe Words.

E *Nota*, that the Juſtices ſaid, That Tithes ſhall not be but of ſuch Things which increaſe from Year to Year, and that by the Manure of Man: But that is againſt the Decretals.

See 51. I. 52. M. 27 H. 8. 13. ac. Br. Conſultation 7. See 1 Cro. 446. Regiſter 55. Br. Diſmes 18. † Agiſtment; this muſt mean of profitable Cattle. Sir Simon Degg 247.

F And all the Juſtices are againſt a Conſultation in a Cauſe of Defamation, becauſe, it ſeems, he may have his Action at Common Law for the ſame Defamation.

G Alſo of Coals, or of Quarries, or the like, a Man ſhall not pay Tithes, nor of † Agiſtment, becauſe that he payeth Tithes for the Cattle which feed in the Paſtures.

H And alſo they ſay, That properly a Conſultation ought not to be granted, but in Caſe where a Man cannot recover at the Common Law in the King's Courts.

I And if the Biſhop cite a Man *ex Officio* for to appear before his Officers for Fornication, *&c.* or ſuch like Offences, and the Party defendeth himſelf by Appeals, or ſuch other Delays, and by ſuing a Prohibition unto the Spiritual Court, and afterwards he waves the Delays, and ſubmits himſelf to the Judgment of the Spiritual Court, and they delay to proceed in theſe Cauſes for the Vexation and Delays, and the Suing of the Prohibition which the Party had before; then the Party ſhall have a Writ directed unto the Spiritual Judges, that they do proceed *in Caſe of Defamation to impoſe canonical Puniſhment, and in Caſe of Submiſſion,* &c. *Provided that whatever may any way tend to the Derogation of our Royal Right, be in no wiſe attempted by you.*

K If the very Patron preſent an able Perſon to the Ordinary, and the Ordinary refuſeth him, and afterwards a Diſturber preſenteth unto the Ordinary another Perſon unto the ſame Church, and the Ordinary doth admit, inſtitute and induct him, and afterwards the very Patron recovereth his Preſentment againſt the Diſturber; for which Cauſe the Preſentee of the very Patron ſueth the Preſentee of the Diſturber in the Spiritual Court, to avoid and remove him; for which Cauſe he ſueth a Prohibition, *&c.* now the Preſentee of the very Patron ſhall have a Conſultation unto the Spiritual Court to proceed in that Caſe, *&c.* But firſt the Record in the Common Pleas ought to be certified into the Chancery of the Recovery, or of the Compoſition there made of the Title of the Preſentment, before the Conſultation ſhall be granted.

L If the Tenants or Poſſeſſors of any Lands or Tenements within any Pariſh have uſed to find a Chaplain to ſay Divine Service in the Pariſh Church, *&c.* Time out of Mind, *&c.* and afterwards they withdraw, and will not find ſuch Chaplain, *&c.* then the Parſon and Pariſhioners ſhall ſue againſt them in the Spiritual Court, for to find ſuch Chaplain in the Church: And if the Tenants or Poſſeſſors of the Land ſue a Prohibition, upon the Matter ſhewed in Chancery, the Parſon and Pariſhioners ſhall have a Conſultation to proceed, and by ſuch Words; *We ſignify to you, that you may lawfully proceed in that*

Cauſe as to the reducing the Chantry aforeſaid to its original State, &c. *and that you may act as to the impoſing a due Puniſhment, by reaſon of ſuch Subſtraction from the ſaid Chaplain thereof, and may further do that which you ſhall know to belong to Eccleſiaſtical Juriſdiction*; *our ſaid Prohibition, or any other to be directed to you hereafter in the Cauſe aforeſaid, notwithſtanding*, &c.

And if it be after Time of Memory, *viz.* in the Time of *R.* 1. and before the Statute of *Mortmain*, the Parſon and Pariſhioners ſhall have ſuch Suit for a Chantry, *&c.* And if a Parſon and Pariſhioners ſue one ſuch Tenant and Poſſeſſor of the Lands to find ſuch Chaplain, *&c.* and he ſue an Inhibition from the Court of *Canterbury*, or appeal unto the Court of *Canterbury*, or make ſuch ſubtil Delays in the Court of *Canterbury*; then the Parſon and Pariſhioners ſhall have a ſpecial Writ unto the Archbiſhop and his Officers: *That you may proceed and act in the Cauſe and Proceſs devolved before you in the Court of* Canterbury, *by virtue of the Appeal aforeſaid, ſo far as relates to the reducing the Chantry to its due State, the impoſing and cauſing to be impoſed due Puniſhment, by occaſion of ſuch Subſtraction from the ſame, and may cauſe the ſaid Sentence pronounced againſt him, if rightly deduced, to remain in its full Strength, and further do*, &c. *our ſaid Prohibition notwithſtanding.* [54.]

A If a Man deviſe an Ox or a Cow unto the Church for Reparation thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the ſame unto the Churchwardens; then the Ordinary *ex Officio*, or the Churchwardens may cite him, and ſue him for the detaining of the Cow or Ox: And if the other Party ſue a Prohibition, the Churchwardens ſhall have a ſpecial Conſultation: *We ſignify to you, that in the Cauſe aforeſaid as to the Reſtitution of the Legacy aforeſaid to the ſaid Churchwardens in Form aforeſaid, and as to impoſing on him canonical Puniſhment for detaining thereof, it may be litigated before you, and you may lawfully proceed and further do that which to the Eccleſiaſtical Court*, &c. *our Prohibition notwithſtanding.* And if he will not proceed upon that, they may ſue an Attachment, *&c.*

B And in many Caſes a Man ſhall have a ſpecial Conſultation. As, if a Parſon ſue in the Spiritual Court for Tithes of great Trees which paſs the Age of twenty Years, and makes his Libel by the Name of *Silva cædua*; now the Party may ſhew in the King's Bench or in the Chancery, that the Trees were great Trees above the Age of twenty Years; and upon this Surmiſe he ſhall have a ſpecial Conſultation to proceed, *ſo that it be touching* Silva cædua, and not of other Trees which are paſt twenty Years Growth, or the Age of twenty Years. And ſee the Statute for the ſame, *Anno* 45 *Ed.* 3. *cap.* 31.

C If a Man have a Chapel within his Manor which is a donative Chantry, or preſentable, and the Chaplain hath uſed to have the Tithes ariſing of the Demeſnes of the Manor Time out of Mind, *&c.* Now if a Parſon (in whoſe Pariſh this Chapel is) ſueth the Lord of the Manor, and alſo the Chaplain in the Spiritual Court, for the Tithes of the ſame Manor, they ſhall have a Prohibition, *&c.* becauſe the Advowſon of this Chapel may come unto the King by Wardſhip or Eſcheat, *&c.* And then the Parſon within whoſe Pariſh this Manor and Chapel is, ſhall have a ſpecial Writ of *Scire facias* againſt the Lord of the ſaid Manor, and alſo againſt the Chaplain, returnable in the

Chancery at a certain Day, if they can ſay any Thing wherefore a Conſultation ſhall not be granted, and the Writ of Prohibition revoked and repealed; and further to do as the Court ſhall award in that Caſe. And in the End of the Writ ſhall be, *And have you there the Names of thoſe by whom you ſhall give him Notice*, &c. *and this Writ*, &c. Which Writ appeareth in the Regiſter in the End of the Writs of *Significavit*.

See Plow 472. In Molin's Caſe. Plow. commends this Form of Scire facias; but there is another Form uſed at this Day.

Breve de Vi Laica removenda.

Old Na. Br. 33. cont. and Marrow in his Reading.

D THIS Writ *de Vi Laica removenda* lieth as well upon a Surmiſe made by the Incumbent, or by him that is (*a*) grieved, *&c.* without any Certificate thereof made in the Chancery by the Biſhop, as upon a Certificate thereof made in the Chancery by the Biſhop.

E And when the Biſhop makes Certificate into the Chancery of the Force, then the Form of the Writ is ſuch:

The King to the Sheriff of Lincolnſhire, *greeting: At the Requeſt of the worſhipful Father the Biſhop of* Lincoln *we command you, that all Lay Force which holds itſelf in the Church of* I. *of his Dioceſe, to the diſturbing the ſaid Biſhop, whereby he is leſs able to exerciſe his ſpiritual Office in that Church, you without Delay do remove from the ſame*, &c. And he ſhall have an *Alias* and a *Pluries*, and an *Attachment* againſt the Sheriff, directed unto the Coroners, if he do not ſerve or return the Writs.

F And if the King do collate unto any Prebend of any Biſhop come to him by Title, and the Biſhop make Reſiſtance, that the King's Preſentee cannot have the corporal Poſſeſſion thereof; then the Writ ſhall be directed unto the Sheriff, and ſhall be ſuch:

We command you, that all Lay or Armed Force which holds itſelf in the ſaid Church, or in the Houſes thereto adjoining, to the diſturbing our Peace in your County, you do without Delay remove from the ſame, and if you ſhall find any Perſons reſiſting in this Matter, that you attach them by their Bodies, and keep them in ſafe Cuſtody in our Priſon, ſo that you may have them before us on the Octave of Saint Hilary, *&c. whereſoever*, &c. *to anſwer us touching the Contempt and Reſiſtance above-mentioned: And have there the Names of thoſe whom you ſhall have attached, and this Writ.* And this Writ *de Vi Laica removenda* G
may be made returnable, or not returnable, at his Pleaſure who will ſue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench.

(*a*) If one has a Writ to the Biſhop, and a Diſturbance of its Execution is made by the Incumbent, or any other, the Juſtices of *C. B.* may grant Remedy. But not if the Diſturbance be after the Execution of the Judgment. 12 *H.* 4. 26. Not upon a Suggeſtion. But upon a Suggeſtion of the Party grieved in the Chancery, he ſhall have this Writ.

H [55.] And note, That by this Writ the Sheriff ought not to remove the (*a*) Incumbent who is in Poſſeſſion of the Church, whether the Poſſeſſion be of Right or Wrong, but only for to remove the Force, and to ſuffer the Incumbent for to enjoy the Poſſeſſion: And if the Sheriff do amove, or would put out the Incumbent who is in Poſſeſſion, the Incumbent ſhall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without Delay he make him amends: And if he do not ſo do, the Party may have an *Alias* and *Pluries*, and *Attachment* againſt the Sheriff. And the Form of the Writ *de Vi Laica removenda*, without the Certificate, is ſuch:

A *The King to the Sheriff, greeting: We command you that all Lay Force, as alſo armed Power, which holds itſelf in the Prebend of* E. *in the Church of* C. *to the diſturbing our Peace, you do without Delay remove from the ſame: And if you ſhall find any Perſons reſiſting you in this Matter, then having taken with you a ſufficient Power of your County, if it ſhall be neceſſary, attach them by their Bodies*, &c. (as above).

B And the Form of the Certificate of the Biſhop is ſuch:

To the moſt excellent Prince and his Lord, the Lord Henry *by the Grace of God*, &c. W. *by divine Permiſſion Archbiſhop of* York, *Primate of* England, *ſendeth greeting in Him by whom Kings do reign and all Things ſubſiſt: We make known to your Royal Highneſs by theſe Preſents, that certain Perſons unmindful of their Safety do hinder and diſturb the Poſſeſſion of Maſter* I. *in the Church of* C. *of our Dioceſe, canonically conferred upon him, which* A. *ſome time kept occupied to the Prejudice of our Office and of Eccleſiaſtical Liberty, and of the Right of the aforeſaid* I. *Therefore we humbly beſeech your Excellency with your wonted Grace to ſtretch forth the Arm of your Royal Authority, to the End that this Force and Power may be abſolutely removed, that the Rebellion of the Enemies of Chriſt being thus ſuppreſſed by your Aid, Eccleſiaſtical Liberty may remain ſafe and unhurt under the Shield of your Defence, and you may therefore obtain from God a worthy Recompence, who, may He long preſerve you to his Church and People! Dated at* B. *the fourth of the Calends*, &c.

Writ of Waſte.

C THE Form of the Writ of Waſte againſt Tenant in Dower doth vary from the Form againſt other Tenants; for the Writ of Waſte againſt Tenant in Dower is ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon by good Summoners* B. (*b*) *who was the Wife of* C. *that ſhe be before our Juſtices at* Weſtminſter *in fifteen Days of the Holy Trinity, to ſhew wherefore ſhe hath committed Waſte, Sale, Deſtruction* (*c*) *and Baniſhment of the Lands, Houſes, Woods,*

(*a*) And if he remove him, the Court of King's Bench ſhall award his Reſtitution, altho' it appears the Incumbent had no Title. *M.* 43 *&* 44 *Eliz.* *Aſcot* ver. *Batchellor.*

(*b*) Where the Writ ſhall be againſt her by her proper Name, ſee 32 *Ed.* 3. *Brief* 265. 31 *Ed.* 3. *Brief* 326.

(*c*) *Quare fecit vaſtum & deſtructionem in Terris & Hominibus*, adjudged good, without ſaying *Exilium.* 2 H. 6. 11.

Gardens, and Men, which ſhe holds in Dower of the Inheritance of the aforeſaid A. *in* N. *to the Diſheriſon*, &c. And in that Writ he doth not rehearſe the Statute which gave the Writ of Waſte, (*a*) nor the Writ of Waſte againſt the Guardian, becauſe they were puniſhable at the Common Law, before the Statute, by Prohibition and Attachment thereupon, if they did Waſte. And *Exilium in hominibus* ſhall not be put in the Writ of Waſte, if the Tenant in Dower, or other Tenant, do not miſuſe the Villains of the Manor, by reaſon whereof they depart from the Manor, or from their Tenures; and if they do, then it is Waſte. And in a Writ of Waſte againſt Tenant for Life or Years, he ſhall recite the Statute in ſuch Form:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. &c. *Wherefore, ſeeing that it is provided by the Common Council of our Realm of* England, *that it ſhall not be lawful for any Perſon to commit Waſte, Sale or Deſtruction of Lands, Houſes, Woods or Gardens; the ſame* B. *hath committed Waſte*, &c. *of the Lands, Houſes and Gardens in* L. *which* (*b*) *the aforeſaid* A. *demiſed to him*, &c.

29 Ed. 3. 15. Et 3 Ma. Dyer 129.

And if an Abbot bring a Writ of Waſte againſt Tenant in Dower, the Writ ſhall be, *To ſhew wherefore he hath committed Waſte of the Lands*, &c. *which he holds in Dowry of the Right of his Church, to the Diſheriſon of his* (*c*) D

Church,

(*a*) *Of Pleadings and Proceſs in Waſte.*] The Defendant pleads a Plea in Bar, which does not acknowledge the Waſte, as a Grant to hold without Impeachment of Waſte, *&c.* if there be a Demurrer thereto, and it is ruled againſt him, yet the Sheriff ought to enquire of the Waſte and Damages; *per Thorpe:* And therefore he may after the Demurrer traverſe the Point of the Writ, and plead no Waſte done. 38 *Ed.* 3. 24. *a. b.* The Plaintiff in Maintenance of his Writ, tenders an Averment, that the Tenant refuſes, this is peremptory againſt the Tenant. 6 *H.* 4. 5. *a. b.* In Waſte againſt two, one makes Default, and the other appears, who thereupon is put to anſwer. 4 *Ed.* 3. 33. 39 *Ed.* 3. 19. 12 *H.* 4. 5. *b.* *Quære*, If a Writ of Inquiry ſhall be awarded? If *Nihil* be returned on the Summons, Attachment and Diſtreſs, and the Tenant makes Default, the Waſte ſhall be inquired. 12 *H.* 4. 4. 21 *H.* 6. 56. Where the Writ of Inquiry is of a Waſte in two Vills, the Jurors ought to view both the one and the other; but it is ſufficient, though the Inquiry be taken at any other Place. 12 *H.* 4. 9. *b.* In Waſte againſt two, one makes Default at the grand Diſtreſs, the other appears; a Writ of Inquiry ſhall not be granted, for one cannot anſwer without the other. 14 *H.* 4. 37. See the contrary to this, *ſupra.*

Note; In Waſte in the *Tenet*, the Summons ſhall be *in Terra petita*, although in Truth another Perſon is Tenant; as if one does Waſte, and afterwards grants over his Eſtate, and upon the Diſtreſs Iſſues ſhall be returned on this Writ. But if it be in the *Tenuit*, although the Sheriff on every Writ returns *Nihil*, yet a Writ to inquire of the Waſte ſhall iſſue. 11 *H.* 6. 4. *a.* 12 *H.* 4. 4. *a.* and 21 *H.* 6. 56.

In Waſte by *Darrel* againſt *Leyburn*, Judgment was on a *Nihil dicit.* Now if the Plaintiff will releaſe the Damages, he ſhall have Judgment for the Place waſted. *Quære*; For a Writ ſhall iſſue to inquire of the Damages, but not of the Waſte, for that is acknowledged. And by the ſame Caſe, the Sheriff need not find Deer on the Place waſted. *Dyer* 204.

Note; In Waſte *in Domibus, Boſcis, &c.* the Plaintiff may abridge the Waſte aſſigned, ſo that he do not falſify his Writ; and therefore he cannot abridge the whole Waſte ſuppoſed *in Domibus*. Dyer 272. *b.*

On a Writ of Inquiry of Waſte on Judgment by Default, the Jury may find no Waſte done. 19 *Ed.* 3. *Waſte* 30. 3 *H.* 6. 296. *per Martyn.*

(*b*) *Note*; If *A.* and *B.* Jointenants, or Parceners, make a Leaſe for Life or Years, and *A.* dies without Iſſue, *B.* may have Waſte againſt the Leſſee, ſuppoſing that he himſelf had leaſed the Eſtate. 46 *Ed.* 3. 17. *a.* 35 *H.* 6. 39. *a. per Priſot.* But if Waſte be brought, ſuppoſing that *A.* and *B.* leaſed to the Defendant for Life, Remainder to the Plaintiff: It ſeems a good Plea, that *A.* leaſed it ſole, *abſque hoc*, that *A.* and *B.* leaſed it. 6 *H.* 4. 5.

(*c*) *Ad Exhæredationem Epiſcopi vel Eccleſiæ.* 2 Mar. Dyer 129.

Church, &c. And ſhall not ſay, *Of the Inheritance of him the Abbot*, nor *to the Diſheriſon of him the Abbot*, &c. But if the Heir bring a Writ of Waſte againſt the Tenant for Life of his Anceſtors, then the Writ ſhall ſuppoſe that the Tenant holdeth *of the Inheritance*, &c. and that the Waſte is done *to his Diſheriſon*, &c. and that they have made Waſte of Lands they hold in Dower of the Wife, yet the Huſband doth not hold in Dower.

E (*a*) And the Writ of Waſte ſhall be always brought againſt the Tenant in Dower or Tenant by the Curteſy, although they have granted over their Eſtates unto others.

F If the Huſband make a Feoffment of his Land, or a Stranger doth abate after the Death of the Huſband, or diſſeiſeth the Huſband in his Life-time, and afterwards the Wife recovereth her Dower againſt the Stranger, *&c.* if he bring a Writ of Waſte againſt the Wife, the Writ ſhall make mention of the Recovery, *&c.* how ſhe recovered the Land againſt him.

G If a Feme hold in Dower of the King who hath the Reverſion, and the King granteth the Reverſion in Fee unto a Stranger, and afterwards the Feme committeth Waſte; now the Grantee ſhall have a Writ of Waſte, and the Writ ſhall make mention how ſhe holdeth of the King, and how he hath granted the Reverſion unto a Stranger, *&c.* and that ſhe who held in Dower of the Stranger of the King's Grant hath committed Waſte, *&c.* So if the Huſband dieth, and the Heir maketh a Feoffment unto a Stranger in Fee, who aſſigneth Dower unto the Wife, and ſhe commits Waſte; the Writ ſhall make mention that ſhe held in Dower of the Gift of her Huſband by the (*b*) Aſſignment of a Stranger, of whom the aforeſaid Feme held in Dower of the Aſſignment which the Heir of the Huſband hath made to the ſaid Stranger, *to the Diſheriſon* of him who bringeth the Writ. The Form of the Writ of Waſte, where the Wife is endowed *ex Aſſenſu Patris*, is ſuch:

20 H. 6. 28.

3 & 4 Eliz. Dyer 206, 208.

(*a*) *Note* 30 *Ed.* 1. 16. Tenant in Dower grants her Eſtate to the Heir under Age, and a Stranger, rendring Rent on Condition of Re-entry for Non-payment. Waſte is made, the Heir diſagrees, the Tenant in Dower re-enters for Non-payment, the Heir brings Waſte. If the Heir at the Time of, or during the Waſte done, took any of the Profits, *&c.* the Waſte is not puniſhable. But if the Heir never took any of the Profits, Waſte lies againſt the Tenant in Dower after the Diſagreement. See 38 *Ed.* 3. 25, 29.

The Huſband levies a Fine, and takes back an Eſtate for Life, Remainder to his Son in Tail, and dies; the Son endows his Mother, who aſſigns over her Eſtate; the Son brings Waſte againſt her, as Tenant in Dower; and adjudged that it lies; but it ſeems alſo, that he ſhall have a general Writ, ſuppoſing that ſhe held in Dower of his Heritage, 26 *Ed.* 3. 76. and yet he may have a Writ making Mention of the Recovery; but ſuch Writ ſhall ſuppoſe that ſhe held of his Heritage; and it ſeems good, as well as in Caſe of a Feoffee, or where the Diſſeiſor of the Huſband aſſigns Dower. 38 *Ed.* 3. 23. 14 *Ed.* 3. *Brief* 273, 282. *vide infra* G.

(*b*) If *A.* makes a Leaſe to *B.* to commence at a Day to come, and then *A.* enfeoffs *C.* and *C.* enfeoffs *D.* before the ſaid Day; and afterwards *B.* enters and does Waſte, the Writ ſhall be *in Terris quas tenet ad Terminum annorum de præfat'* D. *ex aſſignatione* C. *de quo idem* B. *tenuit ad eundem Terminum ex aſſignatione* A. *&c.* although there was no Tenure before the Term commenced. *Dyer* 206. *Darrel* ver. *Leybourn.* And ſo it is if the Leſſor enters on the Leſſee and makes Livery, *&c.* 5 *H.* 5. 12.

[56.] *The King*, &c. *If* S. *&c. then ſummon*, &c. *who was the Wife of* R. *that ſhe be*, &c. *to ſhew why ſhe hath committed Waſte*, &c. *which ſhe holds in Dower of the Gift of the aforeſaid* R. *ſome time her Huſband, with the Aſſent of* A. *of* B. *Father of the aforeſaid* R. *of the Aſſignment of the ſame* A. *to the Diſheriſon of the ſaid* S. *&c.* And if the Wife do recover her Dower againſt the Father, then the Writ of Waſte ſhall make mention of the Recovery thus: *And which the ſame* Iſabel, *in our Court before our Juſtices of the Bench, by Conſideration of the ſame Court hath recovered as her Dower againſt the aforeſaid* A. *to the Diſheriſon of him the ſaid* S. *&c.* And the Writ may be of Mills and Vivaries; and then the Writ ſhall be, *To ſhew wherefore he hath committed Waſte in the Lands, Houſes, Mills, Woods, Vivaries and Gardens.*

And if a Guardian in Chivalry grant over his Eſtate, who maketh Waſte, A
the Writ of Waſte ſhall be brought againſt the Grantee, and not againſt the
Guardian; and it is not like Tenant in Dower or by the Curteſy (*a*): But if
the Guardian do commit Waſte, and afterwards granteth over his Eſtate, then
40 Ed. 3. 33. the Heir ſhall have an Action of Waſte againſt the Guardian, and not againſt
Finchden. the Grantee. And ſo if Tenant for Life or Years commit Waſte, and grant-
41 Ed. 3. 23. Candiſh. eth over his Eſtate, the Writ lieth againſt him who doth the Waſte, and not
42 Ed. 3. 19. againſt his Grantee. And the Form of the Writ againſt the Guardian is ſuch:
per Curiam. *The King*, &c. *If A. ſhall make*, &c. *then ſummon*, &c. *wherefore he hath com-*
24 H. 8. 14. *mitted*, &c. *which he hath or had in his Wardſhip, of the Inheritance*, &c. *to*
20. ac. *the Diſheriſon*, &c.

And againſt the Executors of the Guardian the Writ is, *Summon*, &c. B. *and* C. (*b*) *Executors of the Will of*, &c. *wherefore they have committed Waſte*, &c. *which they have in Wardſhip after the Death of the aforeſaid* B. *of the Inheritance*, &c. *to the Diſheriſon*, &c. B

20 H. 6. 1. ac. In a Writ of Waſte againſt Tenant by the Curteſy, the Form of the Writ by the Regiſter is to recite the Statute; and yet it ſeemeth the Writ is good, although that he doth not recite the Statute; and the Form of the Writ is ſuch: C

The King, &c. *If* A. *ſhall make*, &c. *then ſummon*, &c. *Wherefore, ſeeing it is provided by the Common Council of our Realm of* England, *that it ſhall not be lawful for any Perſons to commit Waſte, Sale or Deſtruction of the Lands, Houſes, Woods or Gardens demiſed to them for Term of Life or of Years, or of thoſe which they hold by the Curteſy of* England, *the ſame* B. *hath committed Waſte of the Houſes which he holds by the Curteſy of* England *of the Inheritance of the aforeſaid* A. *in* N. *to the Diſheriſon of him the ſaid* A. *and contrary to the Form of the Proviſion aforeſaid, as it is ſaid: And have*, &c.

And if the Heir grant the Reverſion of Tenant by the Curteſy unto another in Fee, and the Tenant attorn, *&c.* then the Form of the Writ is ſuch: D

(*c*) *The King*, &c. *If the Abbot of* B. *&c. ſhall make*, &c. *then ſummon* B. *&c. Wherefore, ſeeing that* (as above) *the ſame* B. *hath committed Waſte*, &c. *of the*

(*a*) See accordant 17 *Ed.* 3. 13. 43 *Ed.* 3. 15. 43 *Ed.* 3. 8. 30. 7 *Ed.* 3. 13. *ſed contra* 26 *Ed.* 3. *Waſte* 10. 27 *H.* 6. 7, 81.
See the Statute 11 *H.* 6. *Waſte* 9 *poſt.* 80. C. 40 *Ed.* 3 33. 42 *Ed.* 3. 23. 44 *Ed.* 3. 21. 48 *Ed.* 3. 19. 12 *H.* 4. 4.

(*b*) *Note* 38 *Ed.* 3. 17. Waſte againſt the Executors of *A.* where in Truth the Defendants were Executors of *B.* who was the Executor of *A.* and the Defendants never adminiſtred in the Life of *B.* the Writ ſhall abate.

(*c*) See the Writ adjudged good, 32 *Ed.* 3. *Brief* 348.

Houſes in N. *which he holds for his Life of the aforeſaid Abbot, which* A. *of whom the ſaid* B. *held them by the Curteſy of* England, *of the Inheritance of him the ſaid* A. *aſſigned to the aforeſaid Abbot*, &c.

E (*a*) And if the Heir granteth the Reverſion unto another Stranger in Fee, and the Tenant by the Curteſy doth attorn, and afterwards granteth over his Eſtate by the Curteſy to another Stranger, and afterwards that Stranger committeth Waſte; now the Grantee of the Reverſion ſhall have his Action of Waſte againſt the Grantee of the Tenant by the Curteſy, for he cannot be Tenant by the Curteſy, if not of the Heir, *&c.*

F But if the Tenant by the Curteſy grant over his Eſtate unto a Stranger, and the Grantee commit Waſte, the Heir ſhall have the Action againſt the Tenant by the Curteſy, and not againſt the Grantee who committeth the Waſte. But if the Heir have obtained or granted the Reverſion in Fee, *&c.* and after the Tenant by the Curteſy attorn, and after grants over his Eſtate unto a Stranger who committeth Waſte; now the Grantee of the Reverſion ſhall not have an Action of Waſte againſt the Tenant by the Curteſy, (*b*) but againſt the Grantee of the Tenant by the Curteſy. And if a Feme be Tenant in Dower, and ſhe grant her Eſtate unto a Stranger, and after the Heir granteth the Reverſion in Fee unto another, and the Tenant attorneth, and after the Tenant for Term of Life commits Waſte; it ſeemeth that the Grantee in Reverſion ſhall have an Action of Waſte againſt the Grantee of the Tenant in Dower, as he ſhall have againſt the Grantee of the Tenant by the Curteſy. The Form of the Writ of Waſte againſt the Tenant for Life or Years is ſuch:

11 H. 4. 18. 10 H. 4. Attornment 16. The Attornment of Tenant in Dower is good.

G *The King*, &c. *If* A. *ſhall make*, &c. *then ſummon* B. *&c. Seeing it is provided by the Common Council*, &c. *in Lands*, &c. *demiſed to them for Term of Life or of Years*; *the ſame* B. *hath committed Waſte of the Lands, Houſes, Woods and Gardens in* L. *which the aforeſaid* A. *demiſed to* B. *for the Life of him the ſaid* B. Or thus; *Which* F. *the Father or Mother, or any other Anceſtor of the aforeſaid* A. *whoſe Heir he is, demiſed to the aforeſaid* B. *for a Term of Years*, &c. *to the Diſheriſon*, &c. *and contrary to the Proviſion aforeſaid, as it is ſaid: And have*, &c.

H And by the Statute of *Marlebridge*, *cap.* 23. it is ordered, *That Farmers*, &c. *ſhall not commit Waſte in Houſes*, &c. *or Baniſhment of the Men.* By which Statute the Writ of Waſte *de Exilio hominum* is warranted, *&c.*

11 Ed. 3. Weſt. 113.

I In a Writ of Waſte, if the Premiſſes of the Writ recite, *That it ſhall not be lawful for any Perſon to commit Waſte in Houſes, Woods and Gardens*; in the End of the Writ it is ſaid, that the Defendant hath done Waſte in Lands, Houſes, Woods, Gardens, and Exile of Men; ſo as there is more in the End of the Writ than is in the Premiſſes, yet the Writ is good: And ſo if leſs be in the End of the Writ than is recited in the Premiſſes, yet the Writ is good. As if it be recited, *That whereas it is provided, that it ſhall not be lawful for any Perſon to commit Waſte*, &c. *in Lands, Houſes, Woods and Gar-*

(*a*) And the Diſtreſs ſhall be in the Land leaſed. 12 *H.* 4. 4. 21 *H.* 6. 56. *b. ult.*

(*b*) But if the Huſband's Feoffee endows the Wife, and ſhe aſſigns over her Eſtate, Waſte lies for him againſt the Wife: For the Plaintiff ſhall not ſuppoſe in his Writ, that ſhe held in Dower of him *ex Aſſignatione*, but only that ſhe held in Dower of his Heritage. 38 *Ed.* 3. 23. adjudged.

[57.] *dens*; and in the End it is recited, *That the Defendant hath committed Waſte*, &c. *in the Lands* only, or *in the Woods* only, or *in the Houſes* only; yet the Writ is good.

A If an Abbot make a Leaſe for Life or Years, and dieth, and the Leſſee afterwards committeth Waſte, the Writ ſhall be ſuch: *The King*, &c. *If the Abbot*, &c. *then ſummon* B. *&c. Wherefore, ſeeing that it is provided by the Common Council of*, &c. *the ſame* B. *hath committed Waſte*, &c. *of the Houſes in* L. *which the aforeſaid Abbot*, &c. (if the Abbot himſelf maketh the Leaſe); and if his Predeceſſor made the Leaſe, then thus: *Which* R. *formerly Abbot*, &c. *the Predeceſſor of the now Abbot*, *demiſed to the aforeſaid* B. *for the Life of him the ſaid* B. *or for a Term of Years*, (if the Caſe be ſo) &c. *to the Diſheriſon of the Church of him the ſaid Abbot.* And the like ſhall be for a Prior or Maſter of an Hoſpital.

B And againſt the Executors the Writ ſhall be: *Summon* I. *and* K. *Executors of the Will of* L. *that they be*, &c. *they the ſame Executors have committed Waſte*, &c. *of the Lands which the aforeſaid* A. *demiſed to the aforeſaid* L. *for a Term of Years*, &c.

C And if a Man make a Leaſe to a Feme Sole of Chaſes, and ſhe take Huſband, and the Leſſee dieth, and ſhe and her (*a*) Huſband commit Waſte; the Writ for the Heir ſhall be thus:

The King, &c. *If* A. *ſhall make*, &c. *then ſummon* B. *and* C. *his Wife*, *that*, &c. *Wherefore*, *ſeeing that*, &c. *they the ſame* B. *and* C. *have committed Waſte*, &c. *of the Vivaries in* L. *which they hold for the Life of her the ſaid* C. *of the Demiſe which* F. *the Father of the aforeſaid* A. *whoſe Heir he is*, *made thereof to the ſaid* C. *&c.*

And another Writ for the Heir: Where Land is leaſed to Huſband and Wife and the Heir, and the Huſband dieth, and the Wife committeth Waſte, the Writ ſhall be: *She the ſame* A. *hath committed Waſte*, &c. *of the Houſes in* L. *which ſhe holds for her Life of the Demiſe which* W. *made thereof to the ſame* A. *and the aforeſaid* B. *ſome time her Huſband*, *and to the Heirs of him the ſaid* B. *Father of the aforeſaid* H. *whoſe Heir he is*, &c.

And another Writ: When a Gift is made unto the Huſband and Wife, and unto the Heirs of the Body of the Wife, and the Wife dieth, and the Huſband committeth Waſte, the Heir ſhall have a Writ of Waſte, and the Writ ſhall be:

He the ſame A. *hath committed Waſte of the Houſes in* B. *which he holds for his Life of the Demiſe which* W. *made thereof to the aforeſaid* A. *and* M. *ſome time his Wife*, *and to the Heirs of the Body of her the ſaid* M. *Mother of the aforeſaid* B. *whoſe Heir he is*, *iſſuing*, &c. *contrary to the Form*, &c.

D And if a Man leaſeth Lands for Term of Life, and hath three or four Siſters, and dieth, and they make Partition of the Lands and of the Reverſion,

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(*a*) See 16 *Ed.* 3. 68. *b.* And if the Father makes a Leaſe to the Feme for Life, and dies, and the Son confirms it to her and her Huſband for their Lives; yet Waſte lies *quòd teneat ad terminum* of their Lives, *ex dimiſſione* of the Son. 6 *Ed.* 3. 19. See 46 *Ed.* 3. 25. *b.* A Feme Leſſee for Life takes Huſband, Waſte ſhall be in the *Tenet* as here, although they grant over their Eſtate after the Waſte committed. But if a Feme Leſſee *pur auter vie* takes a Huſband and commits Waſte, and *Ceſtuy que vie* dies, the Writ ſhall be *quas le Fem tenuit*. *Quære*, if ſhe makes a Leaſe for Years; for in ſuch Caſe after the Feme's Death, Waſte does not lie againſt the Huſband in the *Tenuit*. 10 *H.* 6. 11. *Quære*, if he makes the Leaſe for Years, *ſi eadem Lex.*

and the Tenant for Life committeth Waſte; that Siſter and her Huſband who hath the Reverſion ſhall have a Writ of Waſte, and the Writ ſhall be:

The King, &c. *If* A. *of* B. *and* M. *his Wife, ſhall make*, &c. *then ſummon*, &c. F. *Wherefore, ſeeing that by the Common Council*, &c. *the ſame* F. *hath committed Waſte*, &c. *of the Houſes*, &c. *in* L. *which he holds for his Life of the Demiſe of* S. *of* C. *of the Purparty of her the ſaid* M. *allotted to her of the Inheritance which was* S.'*s her Brother's, one of whoſe Heirs ſhe is, by Partition thereof made between them the ſaid* M. A. *and* B. *the Siſters of the ſaid* S. *&c.* Or thus: *The ſame* F. *hath committed Waſte of the Houſes in* L. *which he holds for his Life of the aforeſaid* M. *of the Demiſe of* A. *Father of the aforeſaid* M. *one of whoſe Heirs ſhe is, of the Purparty of the ſame* M. *allotted to her of the Inheritance of the aforeſaid* A. *&c.* And if Tenant for Term of Life grant over his Eſtate unto another, and the Grantee committeth Waſte, the Writ ſhall be:

E *The King*, &c. *If* B. *ſhall make*, &c. *then ſummon* A. *&c. the ſame* A. *hath committed Waſte*, &c. *in the Houſes in* N. *which he holds for the Life of* I. (*a*) *under a Demiſe which the ſame* I. *to whom* B. *demiſed them for the ſame Term, made thereof to the aforeſaid* A. *&c.* And if Tenant for Term of Life grant over his Eſtate, and the Grantee granteth over his Eſtate, then the Writ ſhall be thus:

The King, &c. *If* M. *of* R. *Prebendary of the Prebend of* F. *in the Church of the bleſſed* Peter *of* York, *ſhall make*, &c. *then ſummon* R. *&c. Wherefore, ſeeing that*, &c. *the ſame* R. *hath committed Waſte*, &c. *of the Houſes in* L. *which he holds for the Term of the Life of* A. *who was the Wife of* H. *of* N. *of the Demiſe of* M. *of* O. *who held them for the ſame Term of the Demiſe of them the ſaid* H. *and* A. *to which ſame* A. *and to* M. *of* O. *her former Huſband*, W. B. *ſome time Prebendary of the Prebend aforeſaid, Predeceſſor of the aforeſaid Prebendary, demiſed them for the Life of them the ſaid* M. *of* O. *and* A. *to the Diſheriſon of him the ſaid Prebend* R. *and contrary to the Form of the Proviſion aforeſaid*, &c.

F And by that it appeareth, that if a Prebendary or Parſon maketh a Leaſe for Term of Life, he or his Succeſſor ſhall have an Action of Waſte. If *M.* 10 H. 7. 5. leaſeth Lands unto *I.* for Term of Life, and dieth, and *L.* Son and Heir of the ſaid *M.* granteth the Reverſion unto *H.* in Fee, and *H.* granteth this Reverſion unto *A.* in Fee, and afterwards the Tenant for Life committeth Waſte; now the Writ of Waſte brought by *A.* ſhall be ſuch:

The King, &c. *If* A. *&c. then ſummon* I. *&c. Wherefore*, &c. *the ſame* I. *hath committed Waſte*, &c. *of the Houſes in* L. *which he holds for his Life of the aforeſaid* A. *of the Aſſignment of* H. *of whom the ſame* I. *held them for his Life, of the Aſſignment which* L. *Son and Heir of* M. *who demiſed them to the aforeſaid* I. *for the ſame Term, made thereof to the ſame* H. *&c.*

G If *S.* and *K.* his Wife, ſeiſed in Fee, leaſe the Land unto *B.* for Term of Life, and afterwards *S.* dieth, and *K.* takes *H.* to Huſband, and *K.* granteth the Reverſion unto *A.* in Fee, and afterwards *B.* attorneth, and committeth Waſte, and *A.* bringeth Waſte, the Writ ſhall be:

The King, &c. *If* A. *ſhall make*, &c. *then ſummon*, &c. B. *that he be*, &c. *the ſame* B. *hath committed Waſte*, &c. *of the Houſes in* N. *which he holds for his Life of the aforeſaid* A. *of the Aſſignment which* H. *and* K. *his Wife, made thereof to*

(*a*) See *ex dimiſſione Legationis verſ. le Aſſignationem.* 10 H. 6. 8.

the ſaid A. *which ſaid* K. *and* S. *her former Huſband, demiſed them to the aforeſaid* B. *for the ſame Term*, &c. If *N.* leaſeth Lands for Years unto *F.* which *F.* H
maketh *I.* his Executor, and dieth, and *I.* leaſeth the Lands unto *R.* and afterwards *N.* granteth the Reverſion in Fee to *P.* and *P.* granteth the Reverſion to *M.* in Fee, and after *R.* Tenant for Life, committeth Waſte; the ſaid *M.* ſhall have a Writ of Waſte, and the Writ ſhall be (*a*):

[58.] *The King to the Sheriff*, &c. *If* M. *ſhall make*, &c. *then ſummon*, &c. R. *that he be*, &c. *Wherefore, ſeeing that*, &c. *the ſame* R. *hath committed Waſte*, &c. *in the Houſes in* L. *which he holds for a Term of Years of the Demiſe of* I. *Executor of the Will of* F. *to whom* N. *demiſed them for the ſame Term, the ſaid* M. *being Aſſignee of* P. *of whom the ſaid* R. *held them for the ſame Term, under an Aſſignment which the ſaid* N. *thereof made to the aforeſaid* P. *&c.*

F. leaſed Lands unto *E.* and *A.* his Wife, and unto the Heirs of *E.* and afterwards *E.* dieth, and *B.* his Son and Heir granteth the Reverſion unto *C.* in Fee, and afterwards *A.* committeth Waſte, the Writ ſhall be (*b*): A

The King, &c. *If* C. *ſhall make*, &c. *then ſummon* A. *&c. Wherefore, ſeeing that*, &c. *the ſame* A. *hath committed Waſte*, &c. *in the Houſes in* B. *which he holds for his Life of the aforeſaid* C. *of the Aſſignment which* B. *the Son and Heir of* E. *(to whom and the aforeſaid* A. *ſome time his Wife*, F. *demiſed them, to hold to them the ſaid* E. *and* A. *and the Heirs of the ſame* E.*) made thereof to the aforeſaid* C. *&c.*

(*a*) *Note* the Form of the Writ: *Diſtrain* A. *to anſwer* B. *and* C. *his Wife, wherefore by the Common Council*, &c. *the ſame* A. *hath committed Waſte, Sale and Deſtruction to the Diſheriſon of the ſaid* C. *of the Lands, Houſes, Woods and Gardens in* M. *which he holds for his Life under a Demiſe which* D. *who holds the Tenements aforeſaid of the the aforeſaid* B. *and* C. *made thereof to the aforeſaid* A. *and* E. *his late Wife, and the Heirs of the Body of the ſaid* E. *iſſuing, ſo that if it happens the ſaid* E. *ſhall dye without Heirs of her Body iſſuing, then the ſaid Tenements ſhall remain to* F. *and his Heirs, and which, after the Death of the ſaid* E. *who died without Heir of her Body, and which, after the Death of the ſaid* F. *ought to revert to the ſaid* B. *and* C. *as their Eſcheat, becauſe the ſaid* F. *was a Baſtard, and died without Heir of himſelf*, &c.

Exception 1. That there was no Privity between the Plaintiffs and Defendants, ſo as to ſay *in Terris quæ de iis tenet; ſed non allocatur per Cur'*: For that by the Eſcheat of the Remainder the Seigniory is extinct; and the like of a Tenure determined. And if *F.* was to bring the Writ of Waſte, he ſhall not ſuppoſe a Tenure, for that the Leſſee for Life does not hold of him in Remainder, and *a fortiori* not of the Lord who has the ſame Remainder by Eſcheat; and yet if he in Reverſion brings Waſte, he muſt ſuppoſe a Tenure.

Except. 2. For that the Writ is *& quæ poſt mortem* E. *&* F. *reverti debeant*, where by the Writ he ſuppoſes a lawful Eſtate for Life in *A.* the Defendant, and ſo it is repugnant; *ſed non allocat'*. For here he only conveys to himſelf a Title to the Reverſion, and not *ad Demeſne*; and therefore this would be a good Exception in a Formedon, but not here. Alſo by ——— the Writ is good, although thoſe Words *poſt mortem* had been omitted, and ſo it is Surpluſage.

Except. 3. For that it was *reverti debeat* to the Huſband and Wife, where it ſhould have been to the Wife only; *ſed non allocatur.* For it cannot revert to the Wife without reverting to the Huſband: So in a *Ceſſavit* or *Formedon in reverter.*

Except. 4. For that it ſhould have been laid, as eſcheated from the Wife, and not from the Huſband and Wife; *ſed non allocatur per Cur'*. 3 *H.* 6. 1, 2.

Yet *note*; The Writ ought to be *ad exhæredationem* of the Wife, or elſe it ſhall abate. 8 *H* 6. 9. *a.* See for this 27 *H.* 8. 13. *Dyer* 90. 18 *Ed.* 3. *Fitz. Brief* 835.

(*b*) See a good Form of this Writ by the Aſſignee of a Reverſion againſt the Aſſignee of a Term, *Dyer* 208. *viz. A.* leaſes to *B.* for Years and grants the Reverſion to *C.* who grants over to *D.* and *B.* grants his Term to *E.* who commits Waſte *in the Houſes*, &c. *which he holds for a Term of Years of the Demiſe of* B. *to whom* A. *demiſed them for the ſame Term, of the aforeſaid* L. *of the Aſſignment of* C. *of whom the ſame* B. *held for the ſame Term, of the Aſſignment which* A. *made to him.*

M.

B *M.* leaſeth Lands for Life unto *C.* and *A.* her Huſband, and *A.* dieth, and *C.* taketh to Huſband *T.* of *F.* and *T.* and *C.* his Wife leaſe the Lands unto *P.* of *H.* who leaſeth the Lands unto *J.* and afterwards *M.* granteth the Reverſion unto *R.* (*a*) (*b*) in Fee, and *J.* committeth Waſte, and *R.* bringeth a Writ of Waſte; the Writ ſhall be ſuch:

The King, &c. *If* R. *ſhall make*, &c. *then ſummon* J. &c. *Wherefore, ſeeing that*, &c. *the ſame* J. *hath committed Waſte*, &c. *in the Houſes or Lands which he holds of the aforeſaid* R. *for the Life of* C. *the Wife of* T. *of* F. *under an Aſſignment thereof made to the ſaid* R. *by the ſaid* M. *of whom* P. *of* H. *(who demiſed them to the aforeſaid* J. *for that Term) held them for the ſame Term of the Demiſe of the aforeſaid* T. *and* C. *to which ſame* C. *and* A. *her late Huſband, the aforeſaid* M. *demiſed them for the Life of them the ſaid* A. *and* C. *&c.*

(*b*) *R.* leaſeth Lands unto *Amice* and *J.* her Huſband, for Term of their Lives, the Remainder to *N.* Daughter to *J. D.* for Term of her Life, the Remainder to the right Heirs of *J. D.* and afterwards *T.* (right Heir of *J. D.*) granteth that Remainder unto *B.* of *C.* in Fee, and afterwards *J.* (Huſband of *Amice*) dieth, and ſhe committeth Waſte; the Writ of Waſte ſhall be ſuch:

C *The King*, &c. *If* B. *of* C. *&c. ſhall make*, &c. *then ſummon*, &c. Amice, *who was the Wife of*, &c. *Wherefore ſeeing that*, &c. *the ſame* Amice *hath committed Waſte*, &c. *in the Woods*, &c. *which ſhe holds for her Life of the aforeſaid* B. *of* C. *under an Aſſignment which* T. *the Couſin and Heir of* J. D. *made thereof to the ſaid* B. *of which* T. *the ſame* Amice *held them for the ſame Term under a Demiſe which* R. *made thereof to the aforeſaid* A. *and* J. *her late Huſband, for the Life of them the ſaid* A. *and* J. *ſo that after the Death of the ſame* A. *and* J. *the aforeſaid Woods ſhould further remain to* N. *the Daughter of* J. D. *for her whole Life, and after the Death of the ſaid* N. *the ſame Woods ſhould remain to the right Heirs of the aforeſaid* J. D. *&c.*

(*b*) And by this Writ it appeareth, that he in the Reverſion ſhall have a Writ of Waſte againſt the Tenant for Life, where there is a meſne Eſtate in Remainder for Life to another. Co. Lit. 54 a. Poſt. 59. H.

D There is another Writ of Waſte in this Form:

The King, &c. *If* J. *and* C. *ſhall make*, &c. *then ſummon*, &c. Iſabel, *&c. Wherefore*, &c. *the ſame* Iſabel *hath committed Waſte*, &c. *in all the Lands*, &c. *which ſhe holds for her Life by a Fine thereof levied in our Court before* W. *of* C. *and his Companions our Juſtices of the Bench, by our Writ between the aforeſaid* J. *and* C. *and* R. *of* P. *and which after the Death of the aforeſaid* T. *and* Iſabel *ought to remain to the aforeſaid* J. *and* C. *and to the Heirs of the Bodies of the ſame* J. *and* C. *iſſuing by Form of the Fine aforeſaid*, &c.

E And if a Man leaſeth Lands for Term of Life unto *E.* the Remainder to *M.* for Life, and afterwards granteth the Reverſion in Fee to one *B.* Father of *R.* whoſe Heir the ſaid *B.* is; and afterwards the firſt Tenant for Life dieth, and the Tenant in Remainder entreth, and committeth Waſte; now the Writ ſhall be,

The King, &c. *If* R. *ſhall make*, &c. *then ſummon*, &c. J. *of* C. *and* M. *his Wife*, &c. *Wherefore, ſeeing that*, &c. *the ſame* J. *and* M. *have committed Waſte*,

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(*a*) *Contra*, if the Reverſion was granted for Life, by *Hill* and *Parning*. 11 *Ed. Reſceit* 118. yet Waſte was againſt a Tenant for Years, living him in Remainder for Life. 27 *Ed.* 3. 87.

(*b*) See for this 20 *H.* 6. 36. That Waſte does not lie in ſuch Caſe, till after the Death or Surrender of the particular meſne Eſtate. See *Co. Litt.* 59. *a.*

&c. *in the Lands which they hold of the aforeſaid* R. *for the Life of her the ſaid* M. *of the Aſſignment which* J. *of* C. *(who demiſed the Land aforeſaid to* J. *of* E. *for his whole Life, ſo that after the Death of him the ſaid* J. *of* E. *the ſame Lands ſhould remain to the before-mentioned* M. *to hold for her whole Life) thereof made to* B. *the Father of the aforeſaid* R. *whoſe Heir he is*, &c.

And there are other Forms of Writs in the Regiſter, which are not mentioned here for the Length of them; *ideo quære Librum.* F

3 H. 6. 1. Nota. And there is another Form of Writ of Waſte for the Lord by Eſcheat, who hath the Reverſion by Eſcheat, *&c.* G

21 Ed. 3. 3. & 27. contra. 16 Ed. 3. Weſt. 100. contra. (*a*) And there is a Writ of Waſte in the Regiſter for him in the Reverſion againſt Tenant by *Elegit*, who hath Lands and Tenements in Execution for Debt or Damages. And ſo againſt Tenant by *Elegit*, who hath Lands in Execution by Recognizance of Debt: And alſo againſt his Executor who hath Lands in Execution by *Elegit*. And it ſeemeth to ſtand with good Reaſon, that the Action doth lie. H

But ſome ſay, that he againſt whom the Execution is ſued, ſhall not have an Action of Waſte, becauſe he may have a Writ of *Venire facias ad computandum*, *&c.* and there the Waſte ſhall be recovered in the Debt; but by the Action of Waſte he ſhall recover treble Damages, and ſo it ſeemeth he ſhall not do by that Writ of *Venire facias ad computandum.*

(*b*) And alſo if a Man hath Lands in Execution by *Elegit*, and afterwards he in the Reverſion granteth the Reverſion unto a Stranger in Fee; that the Grantee ſhall have an Action of Waſte againſt the Tenant by *Elegit* ſeems reaſonable; becauſe the Waſte is to his Diſinheritance, and he ought not to ſatisfy the Debt due by the Grantor.

And ſee 21 *Ed.* 3. in Title *Scire facias*, whether Recognizor had a *Scire facias* upon his Surmiſe that the Recognizee had levied all the Debt by cutting of Trees. I

[59.] If a Man have Common of Eſtovers in the Woods of another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Eſtovers ſhall not have an Action of Waſte, but ſhall have an (*c*) Aſſiſe of his Eſtovers: For the Action of Waſte doth not lie but upon a Leaſe made, or againſt Tenant by the Curteſy, or Tenant in Dower, or Guardian.

(*d*) If Guardian in Chivalry commit Waſte, the Heir ſhall have an Action of Waſte as well at full Age as within Age. A

And if a Man be in Ward unto the Lord by reaſon of the Uſe of Lands, becauſe that certain Perſons were ſeiſed in Fee of the Lands holden by Knight's

Note 12 H. 4. 3. per Hankford, in a Writ of Waſte the Writ doth not recite the Statute, which proves that a Prohibition was againſt the Guardian at the Common Law.

(*a*) *N. B. ante*, 37 *H. contra.* So 19 *Ed.* 3. *Waſte* 31. 16 *Ed.* 3. *Waſte* 20. A *Scire facias* was againſt a Tenant by *Elegit* who had cut Trees, to pay the Reſidue of the Money, to anſwer for the Trees cut, and for the Plaintiff to have his Land again. *Cur'*: By the Statute againſt cutting Trees, this is in Nature of a Treſpaſs, and lies not in Account. Nor is he puniſhable by this Writ (of Waſte) but in an Action on the Caſe only. 21 *Ed.* 3. 26.

(*b*) See *ſupra*, and *Note*, he cannot in a *Scire facias* compel him to anſwer to the Waſte and Cutting of the Trees, and therefore it was waived. 21 *Ed.* 3. 30. *b.* See *F. N. B.* 104. noted that Waſte lies. *Quære.*

(*c*) See 4 *Ed.* 4. 2. 11 *H.* 4. 11. 32 *Ed.* 3. *Waſte* 36.

(*d*) *Note*; Waſte does not lie againſt Guardian in Socage, but only Account or Treſpaſs, according to the Nature of the Waſte. Adjudged 16 *Ed.* 3. *Waſte* 100. *Vide infra* E.

Service unto the Uſe of his Father and his Heirs; now if the Guardian commit Waſte, the Heir within Age, or of full Age, ſhall have the Action of Waſte againſt the Guardian, and yet the Heir hath not the Reverſion of the Lands, but the Uſe only. But that is given by the Statute of 4 *H.* 7. *cap.* 17.

And if the Guardian do commit Waſte, he ſhall loſe the Wardſhip; and if the Wardſhip be not ſufficient to anſwer the Damages for the Waſte, then he ſhall render Damages unto the Value over and above the Loſs of the Wardſhip, by the Statute of *Glouceſter*, *cap.* 5.

B If the King commit the Wardſhip of the Heir in Ward unto another, and the Committee doth Waſte; then upon a Surmiſe made thereof in Chancery, the King ſhall ſend a Writ unto the Eſcheator, to go to the Land, and ſee if Waſte be done, and to certify the King thereof in the Chancery.

(*a*) If Eſcheators do commit Waſte in Lands which they have in their Hands in Cuſtody; the Heir within Age, or of full Age, ſhall have an Action of Waſte, and ſhall recover treble Damages againſt them, and they ſhall ſuffer Impriſonment two Years at the leaſt at the King's Pleaſure. And ſo if Eſcheators do commit Waſte in other Lands ſeized into the King's Hands by Inqueſt of Office. *Anno* 36 *Ed.* 3. *cap.* 13.

(*b*) And Eſcheators or other Guardians of Lands, in the Vacation of the Temporalties of Biſhopricks or Abbies, ſhall do no Waſte, *&c.* *Anno* 14 *Ed.* 3. *pro Clero*, *cap.* 4 *&* 5.

C And if Tenant for Term of Life, or in Dower, or by the Curteſy, or for Years, grant over their Eſtate to divers unknown Perſons, *&c.* to defraud him in the Reverſion, and afterwards Waſte is committed; he in the Reverſion ſhall have an Action of Waſte againſt the firſt Tenant who took the Profits, *&c.* *Anno* 11 *H.* 6. *cap.* 5.

D There is another Writ of Waſte which lieth betwixt two Tenants in Common of Lands, or a Wood in Fee-ſimple; and the Form of the Writ is ſuch: 1 Inſt. 200. b. Weſt. 2. c. 22.

The King, &c. *If* A. *ſhall make*, &c. *then ſummon*, &c. B. *to ſhew wherefore, ſeeing that the ſame* J. *and* B. *hold the Wood of* J. *in* N. *in Common, the aforeſaid* B. *hath committed Waſte*, &c. *of the ſaid Wood to the Diſheriſon of him the ſaid* A. *&c. And have you there*, &c. And this Writ lieth as well of Lands, Piſcary, Turbary, and the like, as of Woods, when they are holden in Common. See the Statute of *Weſt.* 2. *Cum duo vel tres*, *&c.* *Turbariam*, *cap.* 22.

E (*d*) The Heir within Age ſhall have an Action of Waſte againſt the Guardian in Socage. Supra A. B.

The Heir at full Age ſhall have an Action of Waſte againſt the King's Committee, *&c.*

F If two have a Reverſion unto them, and unto the Heirs of one of them, they ſhall join in an Action of Waſte againſt Tenant for Life. 22 H. 8. 25. Newton ac. 28 H. 6. Waſte 9.

G (*e*) Guardian in Socage ſhall not puniſh Waſte done by a Stranger.

(*a*) How this may be preſented in *B.* and anſwered at the King's Suit, and how the King's Grantee ſhall anſwer to the Heir in ſuch Caſe, ſee 40 *Aſſ.* 22.

(*b*) See *Rot. Parl.* 8 *Ed.* 2. *M.* 9.

(*c*) And although they hold but for Life, and by ſeveral Titles, yet Waſte *pro indiviſo* lies. 21 *Ed.* 3. 29.

(*d*) The Heir in this Caſe ſhall have Account or Treſpaſs, but not Waſte. See 46 *Ed.* 3. 17. 7 *H.* 6. 23. 17 *Ed.* 3. 7. 7 *Ed.* 3. 54. 2 *H.* 5. 7.

(*e*) See 46 *Ed.* 3. 17. *Perk.* 113. *b.* 4 *Ed.* 3. 16.

(*a*) Waſte

46 Ed. 3. 17.

H (*a*) Waſte ſhall be brought againſt Tenant for Life, where there is a meſne Eſtate for Years between the Tenant for Life and him in the Reverſion.

48 Ed. 3. 16.
50 Ed. 3. 4.
10 Ed. 4. 9.

And it appeareth by the Regiſter, that the Writ of Waſte ſhall be maintainable, although the Meſne in the Remainder for Term of Life be between the Tenant for Life and him in the Reverſion.

Choke contr.
42 Ed. 3. 22.
Belk.
2 H. 4. 3.

I (*b*) Where a Leaſe is made unto the Huſband and Wife for Life or Years, there the Wife ſhall not be puniſhed, after the Death of her Huſband, for Waſte done by the Huſband. *M.* 3 *Ed.* 3.

Old Nat.
Brev. 36.
4 Ed. 3.
Waſte 22. cont.

K The Tenant may cut Trees to mend Houſes, *&c.* and to do Reparations. But if Houſes decay by the Default of the Tenant, (*c*) to cut Trees to amend them is Waſte.

7 H. 6. 33. ac.
40 Aſſ. 22.

L Where Waſte is done by the King's Enemies, or by Tempeſt, the Tenant ſhall not be puniſhed for the ſame.

20 Ed. 3.
Waſte 32.

M Cutting of dead Wood is not Waſte. And if a Man cut Wood to burn, where he hath ſufficient Head-wood, it is Waſte. 2 *H.* 6. 10.

2 H. 6. 11.
7 H. 6. 38.
40 Ed. 3. 25.

Alſo it is not Waſte to ſuffer Lands to lie freſh, and not to manure them, and to ſuffer them to grow full of Thorns, *&c.* (*d*) Alſo it is not Waſte to fell ſeaſonable Wood, which is uſed to be felled every twenty Years, or within that Time.

9 H. 6. 66.
22 H. 6. 12.

(*e*) If a Man fell Trees it is Waſte; and if he ſuffer the Germins upon the Roots of the Trees to be again newly deſtroyed, the ſame is new Waſte (*f*).

20 H. 6. 1.
10 H. 7. 2.
contra.

N And if a Man do not repair the Banks, by reaſon whereof the Land is drowned, the ſame is Waſte.

25 H. 3.
Waſte 131.
20 H. 6. 1.
22 H. 6. 24.
16 H. 2. ac.

And if a Man plough Meadow, *&c.* it is Waſte. A Wall or Pale, which is (*g*) covered with Thabe or Timber, may be Waſte, if the Tenant ſuffer them to be uncovered, by reaſon whereof, *&c.* And the digging of Gravel, or Stone, or Coals, ſhall be ſaid Waſte (*h*).

Houſe-bote, Hay-bote, and Fire-bote, do appertain unto a Termor of common Right, and he may (*i*) take Wood for the ſame. *H.* 21 *H.* 6.

A Biſhop

(*a*) See *Bro. Waſte* 56. *contra* 48 *Ed.* 3. 16. 50 *Ed.* 3. 4. 11 *Ed.* 3. 3, 9. *Perk.* 8. 7 *H.* 6. 36. *Nota bene.*

(*b*) See the contrary, *Kelw.* 113. 19 *Ed.* 3. *Breve* 246. but 11 *H.* 4. 3. *per Cur'*, 19 *H.* 6. 5. ſeem to accord.

(*c*) *Contra,* if ruinous at the Time of the Leaſe made. *Dyer* 36. See 12 *H.* 8. 1.

(*d*) See 11 *H.* 6. 1. Oaks cannot be ſaid ſeaſonable Wood, which are paſſed the Age of 20 Years, but by a Cuſtom in any Place, where is Plenty of Wood (Timber) Oaks under 20 Years may be ſeaſonable Wood. And ſuch Cuſtom may be alledged in the Wood itſelf, without ſaying, *In ſuch a Town or Hundred ſuch a Cuſtom is had,* &c. 4 *H.* 6. 1. *Raſt. Entr.* 69. See 40 *Ed.* 3. 25. 11 *H.* 6. 5.

(*e*) See Waſte aſſigned in permitting of Wood to be uninocloſed, whereby the Cattle eat the Germins. 11 *H.* 6. 1. 22 *H.* 6. 12.

(*f*) And treble Damages ſhall be recovered for both, yet he cannot recover *Locum vaſtat'.* 22 *H.* 6. 12.

(*g*) And it ought to be ſhewn *ſo covered* in the Aſſignment of the Waſte. *Dyer* 108. 22 *H.* 6. 24.

(*h*) See 5 *Co.* 12. *a.* 2 *H.* 4. 2. 1 *H.* 7. 14. 12 *H.* 8. 1.

(*i*) *Viz.* Oaks, Elms, Aſh, *&c.* for Repair of the Houſe, and Under-wood, *&c.* for Incloſures and Firing; but *Note*; Oak, Elm, Aſh, are not Under-wood, 21 *H.* 6. 46. which ought to be ſhewn by the Defendant in a Writ or Action of Waſte. *Dyer* 19.

Sir

O A Biſhop, or a Maſter of an Hoſpital, or a Parſon, ſhall not puniſh Waſte done in the Time of their Predeceſſors. But an Abbot or Prior ſhall. See 57. E.

P Tenant in Tail, after Poſſibility of Iſſue extinct, ſhall not be puniſhed for Waſte.

A Cutting down Willows in the Sight of the Manor is adjudged Waſte. *P.* 40 *Ed.* 3. [60.]

B Leſſee for Life, Remainder in Tail, the Remainder in Fee unto the Leſſee for Life, if he do commit Waſte, he ſhall be puniſhed by him in the Remainder in Tail; and yet the Leſſee for Life hath the Remainder in Fee, but there is a meſne Eſtate of Inheritance, *&c.* 50 Ed. 3. 3.

C (*a*) If a Man cut Trees of the Value of three Shillings and four Pence, it hath been adjudged Waſte. 14 H. 4. 11. 38 Ed. 3. 7. Graunge to the Value of 40 s. waſted, and yet no Waſte, ſay they.

D If a Man maketh a Leaſe for one Year, or Half a Year, and the Tenant do Waſte, the Leſſor ſhall have Waſte, and the Writ ſhall ſay, *Which he holds for a Term of Years*, and in the Count he ſhall ſhew the ſpecial Matter. *Quære Litt.* 14.

E (*b*) A Termor may cut the Under-wood growing under the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. *P.* 41 *Ed.* 3. 25. 42 *Ed.* 3. 6. 10 *H.* 7. 2.

F And a Man may have Action of Waſte, and count upon divers Leaſes. *M.* 44 *Ed.* 3. 17. See 34 *H.* 8. 12.

G (*c*) The Guardian ſhall not be puniſhed for Waſte done by a Stranger, *&c.* but a Termor ſhall, *&c.* 44 *Ed.* 3. 17.

H (*d*) If Tenant in Tail leaſeth the Lands for his own Life, he ſhall have an Action of Waſte againſt the Tenant, if Waſte be done.

I (*e*) The Grantee by Fine of the Reverſion ſhall not have a Writ of Waſte againſt the Tenant before the Tenant attorn: But if a Reverſion eſcheat unto the Lord, he ſhall have Waſte againſt the Tenant without Attornment. Lit. 131.

And ſo if the King grant the Reverſion by Letters Patent, the Grantee ſhall have Waſte without Attornment. 34 H. 6. 51. 6 Ed. 3. 17.

And ſo if a Man deviſeth the Reverſion unto another in Fee, upon Waſte done the Deviſee ſhall have Waſte without Attornment. Attorn. 13. 12 Ed. 4. 3.

Sir *W. W.* The Cutting of Oaks of the Age of ſeven Years is not Waſte, by *Brian,* 13 *H.* 7. 21. But *Newton,* 22 *H.* 6. 47, ſaid, the Termor cannot cut either Oaks or Aſh for Firewood.

(*a*) That many petty Waſtes are puniſhable together, ſee 14 *H.* 4. 11. 9 *H.* 6. 66. *infra* P.

(*b*) Waſte *in topping and lopping twenty Aſhes and twenty Elms,* and on a Demurrer adjudged for the Plaintiff. *Dyer* 65. *a.* But if the Aſſignment be *in cutting down and ſelling twenty Oaks,* &c. and the Defendant pleads no Waſte made, the Plaintiff cannot give in Evidence Lopping of Oaks. *Dyer* 92. *a.*

(*c*) But if the Leſſee himſelf commits Waſte, or commands another to do it, as to cut Trees, *&c.* the Leſſee may plead this in Bar of Waſte, but then the Leſſee ſhall be barred of his Action of Treſpaſs for ever. 5 *H.* 4. 2. *b.* 2 *H.* 7. 14. *b.*

(*d*) See 1 *Inſt.* 345. *Litt.* 145. *contr. quære* 2 *H.* 5. 7.

(*e*) See 34 *H.* 6. 6. 5 *H.* 7. 19. *Nat. Brev.* 269.

10 H. 7. 5.

K (*a*) And none ſhall have an Action of Waſte, but he who hath an Eſtate in Fee-ſimple or in Fee-tail. But a Parſon or Prebendary ſhall have a Writ of Waſte upon their Leaſe; yet ſome ſay, that they have not the Fee-ſimple in themſelves alone.

45 Ed. 3. 9. Thorp, ac.

L (*b*) And if Tenant for Term of Life commit Waſte, and afterwards alieneth in Fee, yet the Writ of Waſte lieth againſt him: Otherwiſe it is if the Waſte be done after the Alienation made, as is ſaid: *Tamen quære.* 10 *H.* 7. 1. 25 *Ed.* 3. 36, 63.

3 H. 7. 11. and 5 H. 7. 24. for the Reaſon of the Caſe.

M If an Abbot committeth Waſte in Lands which he hath in Ward, and dieth, the Succeſſor ſhall not be charged. But if he be depoſed, the Succeſſor ſhall be charged. *M.* 49 *Ed.* 3. See 43 *Ed.* 3. 8.

21 H. 6. 3. 22 H. 6. 2.

N A Writ of Waſte ſhall be maintainable againſt one upon a Leaſe made unto him, until he be promoted unto a Benefice, and the Writ ſhall ſuppoſe, *That he holds for Term of Life.* And ſo of a Leaſe made to endure from ſuch a Feaſt unto (*c*) ſuch a Feaſt, the Writ ſhall ſuppoſe, *That he holds for a Term of Years* in that Caſe, and by the Court the ſpecial Matter ſhall be ſhewed.

O (*d*) Deſtruction of Villains by Tillage, adjudged Waſte.

P (*e*) Waſte done by a Guardian unto the Value of twenty Pence, was adjudged Waſte, and the Plaintiff recovered. *H.* 34 *Ed.* 3.

40 Aſſ. 22. Waſte 24. by Knevit. A Houſe which was newly built and not covered, was abated by the Guardian, and no Waſte. But if a Frame which was once covered in the Life of the Leſſor, if the Leſſee do eraſe it after his Death, the Heir ſhall have Waſte. 45 Ed. 3. 3, 20. Ant. 39. D.

Q The Termor is not bound for to repair the Houſes which are ruinous at the Time of the Leaſe made unto him. 49 *Ed.* 3. 2.

R If two Coparceners leaſe Lands for Life, and Waſte is committed, and afterwards one of them dieth; the Aunt and the Niece ought to join in an Action of Waſte for the Waſte done before; and yet the Niece ſhall (*f*) not recover any Damages for the ſame, but the Place waſted; and it ſeems they ſhall hold the ſame in Coparcenary. *M.* 11 *Ed.* 3.

If there be two Coparceners, and one hath Iſſue, and dieth, and her Huſband is Tenant by the Curteſy, and committeth Waſte, his (*g*) Son ſhall not have an Action of Waſte againſt him without naming the other Coparcener:

(*a*) See *Fitz. Waſte* 5. *Litt.* 145. *Nat. Brev.* 36.

(*b*) But for Waſte done before the Surrender (no) Action (of Waſte) lies; *quære.* 21 *Ed.* 4. 31. 8 *H.* 5. 8. 14 *H.* 14. *a.* 19 *H.* 6. 66. And the Writ in that Caſe ſhall be in the *Tenuit*, 14 *H.* 6. 14. as ſome held. But by others it ſhall be in the *Tenet*, whether he be Tenant for Life or Years; but if the Leſſor enters with Tort on the Iſſue, the Action is ſuſpended for Waſte done before the Entry, 8 *H.* 6. 10. and he ſhall be ſummoned on the ſame Land. 21 *H.* 6. 57. *a.*

(*c*) See 14 *H.* 8. 11. *Litt.* 14. 7 *H.* 7. 2. 46 *Ed.* 3. 31.

(*d*) So if Villains by reaſon thereof go out of or leave the Seigniory, it is Exile, and puniſhable in Waſte; *contra*, if only manumitted, *&c.* 2 *H.* 6. 11. *a.* 14 *H.* 4. 11.

(*e*) See 12 *H.* 8. 1. 7 *H.* 6. 38. *ſupra* C.

(*f*) See 11 *Ed.* 2. *Waſte* 115. 45 *Ed.* 3. 3. *b.* 11 *H.* 4. 16. *b.* 48 *Ed.* 3. 14. *b.* 35 *H.* 6. 23. *b.* *Kelw.* 105. *a.* *Nat. Brev.* 101. 22 *H.* 6. 12. 49 *Ed.* 3. 2.

(*g*) See 9 *H.* 6. 11. *b.* *Dubitatur*, but *Kelw.* *fol.* 103. *a.* *Caſe* 64. that the Iſſue alone ſhall have it. 15 *H.* 7. 14.

But if he bring ſuch (*a*) Writ, it ſhall abate. *Quod vide P.* 2 *H.* 6. Title *Waſte.*

S If there be Tenants in Common *pro indiviſo*, and one committeth Waſte, the other two ought to join in an Action of Waſte againſt the third. See for that *M.* 3 *Ed.* 2. *Waſte.*

T If the Guardian commit Waſte, and the Heir being within Age, bringeth an Action of Waſte, the Guardian thereby ſhall loſe the Wardſhip, and Damages for ſo much as is waſted, beſides the Value of the Wardſhip which is loſt; but if the Heir (*b*) at full Age do bring a Writ of Waſte againſt him who was Guardian, and recover, then he ſhall recover treble Damages againſt the Guardian, becauſe the ſame is out of the Statute of *Glouceſter*, which ſaith, That the Guardian ſhall loſe the Wardſhip; for he cannot loſe the Wardſhip there; and therefore he is not in that Caſe as Tenant in Dower or by the Curteſy are, who were puniſhable in Waſte by the Common Law. *Quod vide M.* 12 *H.* 4. 3. in the Title of *Waſte*, the Opinion of *Thirning.*

(*c*) *Writ of Eſtrepment.*

U THERE are two Manner of Writs of Eſtrepment: One is when a Man hath a real Action depending, as a *Formedon*, or a *Dum fuit infra ætatem*, or a (*d*) Writ of Right, or (*d*) ſuch Action wherein the Demandant ſhall not recover Damages; then he may ſue this Writ of Eſtrepment againſt the Tenant, inhibiting him that he do not make Waſte, nor ſtrip, pendent the Action: And this is properly before Judgment is given for the Demandant.

And another Writ of Eſtrepment lieth for the Demandant, where he hath Judgment (*e*) to recover Seiſin of Land, and before Execution ſued by *Habere*

3 H. 6. 16. Variance from the firſt Record for the Recital of the Name, Town or the like, ſhall not abate the Writ, becauſe it is Original, not Judicial. 3 H. 6. 16. No Age in this Writ, for it is in Nature of Treſpaſs, and no Proceſs of Utlawry, for that it is a Preeyre. 14 H. 7. 10. If the Defendant plead in Arreſt of Judgment, or Releaſe be pleaded after Verdict, or if the Juſtices take Advice of their Judgment, the Party may have Eſtrepment, by Read, 2 H. 6. 13. 4 Eliz. Dyer 210.

(*a*) See 9 *H.* 6. 11. 50 *Ed.* 3. 3. *ante* 39. D.

(*b*) *Note*; One ſhall not recover Coſts on the Statute of *Glouceſter.* 30 *Ed.* 3. 27. *b.* 2 *H.* 4. 17. *b.* 12 *H.* 4. 4. 5 *H.* 5. 13. *a.* 9 *H.* 6. 66. *b.* 14 *H.* 6. 13. *a. contr.* 5 *Ed.* 4. 7. *a.* See *Kelw.* 26. the Stat. 289.

(*c*) See *Rot. Parliament.* 28 *Ed.* 3. *n.* 19. A Petition that this Writ may lie in every Action where the Party is to recover Damages. *Reſp. Lex antiqua ſervira.*

(*d*) See 14 *H.* 7. 7. *a. b.* and *Dyer* 210. *b.* In a *Quid juris clamat*, pending the Writ, and alſo between the Judgment and Execution, in *Dyer*, *Cateſby*'s Caſe, *Dubitatur* in a Writ of Dower, where the Huſband did not die ſeiſed. *Tr.* 6 *Eliz. Mo.* 69.

(*e*) See 21 *Ed.* 3. 51. *b.* The Demandant had Judgment in a *Scire facias* on a Fine againſt *B.* and ſues an Eſtrepment, and found Pledges to purſue as he ought againſt *B.* and *C.* and others, of an Eſtrepment made between Judgment and Execution; all Demand and had Oyer of the Record, and demand Judgment, ſeeing they were not Parties to the Record, and *C.* pleads, that *B.* was his Tenant for Life, and concludes to the Inqueſt; whereas he might have pleaded in Bar, that he was not compriſed, and was *amerced* for his feint Plea, *&c.* *Note*; The Plaintiff

facias ſeiſinam, he may ſue this Writ, that the Tenant do not Waſte or Strip: X
And this Writ doth recite the Recovery and the Judgment, *&c.* And alſo the Demandant may have a Writ of Eſtrepment directed to the Sheriff, commanding him that he do not ſuffer the Tenant to do Waſte or Strip.

14 H. 7. 7. Nat. Br. 40. [61.]

And ſome ſay, that this Writ of Eſtrepment doth not lie in ſuch Action Y
where the Demandant ſhall recover Damages againſt the Tenant. But it ſeemeth reaſonable, that the Demandant have ſuch Writ where he doth recover Damages, as where not: For it may be that the Tenant is not of Ability to ſatisfy the Demandant for his Damages. And alſo if the Tenant ſhall be ſuffered to let the Houſes to fall to Decay, or to pull them down, and to deſtroy the Parks and Chaſes, it ſhould be very inconvenient.

28 H. 6. 8. qu. 22 Ed 3. 2. Eſtrepment 9. Eſtrepment brought againſt the Defendant, and a Stranger to the Recovery.

And in every real Action the Demandant may have a Writ unto the Sheriff, A
commanding him that he ſee that the Statute which ordaineth the Eſtrepment be obſerved; and that he do not ſuffer the Tenant to do ſuch Strip: And by the like Reaſon he may have the Writ againſt the Tenant, where he may receive Damages, *&c.*

(*a*) And if the Tenant do make a Feoffment hanging the Plea, the Deman- B
dant may have a Writ of Eſtrepment againſt the Tenant and againſt his Feoffee, *&c.* And by the ſame Reaſon it ſeemeth, that he may have a Writ of Eſtrepment againſt the Tenant and thoſe who are his Servants, naming their Names, *&c.* (*b*) although they have nothing in the Tenancy: *Quære tamen. Vide T.* 5 *Ed.* 2. Tit. *Eſtrepment.*

6 H. 4. 2. 34 Ed. 3. Eſtrepment 15. 15 Eliz. Dyer 325.

In an Aſſiſe, and in every real Action where the Demandant ſhall recover C
Damages, he may have a Writ of Eſtrepment for Strip made after the Judgment, and before Execution: But for Corn cut and carried away after Judgment, and before Execution ſued forth by the Demandant, the Demandant ſhall not have a Writ of Eſtrepment. *Quære* what Remedy he ſhall have: It ſeemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think, for it ſhall not be ſaid Eſtrepment, if not that the Tenant do ſuch a Thing, which ſhall be ſaid Waſte if a Termor had done it.

18 H. 8. 5.

And when a Man purchaſeth his original Writ directed to the Sheriff, then D
may be purchaſed his Writ of Eſtrepment againſt the Tenant, if he will; or a Writ unto the Sheriff, commanding him to ſee that the Statute which ordaineth the Eſtrepment be obſerved.

Note; A Man cannot have this Writ between the Award of the Writ and the Return; for the Statute giveth it pendent the Writ, and it is not pendent till returned. See 12 R. 2. Eſtrepment 6. By Charlton, he ſhall not recover Damages for Waſte before the Judgment againſt the Tenant of the Land.

Plaintiff did not dare to demur, but tendred an Iſſue, *viz.* compriſed, and the others *contra.* 22 *Ed.* 3. 2.

So *Note*; The Record may be falſified in this Writ. *Note*; There ſhall no Judgment be given in Eſtrepment, till the ſpecial Plea determined. 3 *H.* 6. *Judgment* 4. See Judgment therein for Damages, *Paſ.* 19 *Eliz. Rot.* 841. *Bendl.* 220.

(*a*) See *infra*, *H.* 22 *Ed.* 3. 2, 3.

(*b*) And this was ſo at Common Law. 22 *Ed.* 3. 3.

E And if a Man ſueth a Writ of Right unto the Lord of a Court Baron, there he may ſue a Writ out of the Chancery directed to the Sheriff, that he ſee that Waſte be not done, *&c.* or he may ſue a Writ out of the Chancery directed to the Party himſelf, commanding him that he ſhall not do Waſte, *&c.* and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant ſhall have the Writ of Eſtrepment out of the Common Pleas or out of the (*a*) Chancery, at his Election.

F And the Writ may be directed unto the Sheriff and the Party; or he may have ſeveral Writs, one to the Sheriff, and the other to the Party. 3 H. 6. 13.

G And hanging the Action the Tenant may do Waſte, and ſhall not be puniſhed, becauſe it is before the Prohibition delivered unto him; but only for that Waſte done after the (*b*) Prohibition delivered. 3 H. 6. 16. 12 R. 2. Br. Eſtrepment 13. they were at Iſſue, if it were before the Delivery, or after.

H (*c*) And if a Stranger of his own Wrong do Waſte after the Prohibition delivered unto the Tenant, and againſt the Tenant's Will, then the Tenant ſhall not be puniſhed for that Waſte, *&c.*

I In a *Scire facias* to execute a Fine, if the Tenant do commit Waſte, the Demandant may ſue a Writ of Eſtrepment, *&c.* 33 H. 6. 6. 14 H. 7. 7.

K In an Aſſiſe the Tenant did (*d*) Waſte after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards ſued a Writ of Eſtrepment againſt the Tenant for the Waſte done by him after the Verdict and before Judgment; and it was awarded, that the Writ was well brought. *H.* 21 *Ed.* 3. 2 H. 6. 13.

L And a Writ of Eſtrepment againſt the Tenant for Waſte done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6. cont. by ſome.

M And if a *Formedon* be brought of a Manor, and after the Eſtrepment is brought againſt the Tenant, and afterwards a Tenancy doth eſcheat unto the Manor, and the Tenant doth commit Waſte in that Manor, he ſhall be puniſhed for the ſame, and yet it is not demanded by the Writ, but Sureties were demanded by the Writ in the Name of the Manor, and the Land cometh in lieu of the Services, *&c.* 15 Eliz. Dyer 325, ac. 4 Ed. 3. 32. Br. Eſtrepment 12.

(*a*) 2 *H.* 6. 13. *a.* 33 *H.* 6. 86. *a. contr.* 33 *Ed.* 3. *Brief* 917.

(*b*) But the Defendant ſhall not be impriſoned for a Waſte done after, except the Writ was directed to him; adjudged in a Caſe between the Earl of *Cumberland*, and the Counteſs Dowager. 16 *Jac.* 1.

(*c*) In an Eſtrepment againſt an Infant, who is in by Deſcent, he ſhall not have his Age by Award, becauſe he is to anſwer for the Contempt. 2dly, For Waſte done after the Prohibition by his Guardian in Socage, without his Command, he ſhall not be puniſhed, for the Prohibition extends only to Waſte done by himſelf; yet a Tenant for Life ſhall be charged in a Writ of Waſte, for a Waſte done by a Stranger. 3 *H.* 6. 17. See 28 *H* 6. 8.

(*d*) See it adjudged, that he ſhall have a Writ of Eſtrepment in ſuch Caſe, 21 *Ed.* 3. 51. *b.* 14 *H.* 7. 7. *a. b.* Yet it is held, he may have a Writ to the Sheriff to inquire of the Damages for the Waſte done between the Verdict and Judgment, and upon the Inqueſt, the other ſhall be put to anſwer the Damages. 21 *Ed.* 3. 3. *a.* 21 *Ed.* 3. 51. *Note*; The Writ which was prayed was a *Venire facias* to anſwer to the Eſtrepment, and it was granted; ſo that it ſeems no Prohibition preceded. See 14 *H.* 7. 7. for a *Scire facias* before a Writ of Eſtrepment granted, but if the Tenant does Waſte after a View, and before Judgment, a *Scire facias* lies on a Surmiſe thereof, or a Writ of Eſtrepment. 6 *H.* 4. 1. *b.* See the *Regiſter* 77. *b.* among the Notes.

14 H. 7. 10. Cutler and Keble.

If a Man do recover in a Writ of Waſte, he ſhall have a Writ of Eſtrepment againſt the Defendant for Waſte done after the Judgment, and before the Execution. 7 *H.* 4. 16. N

21 Ed. 3. 3. Br. Eſtrepment 7.

In Attaint in the Common Pleas the Plaintiff ſhall have the Writ of Eſtrepment againſt the Defendant out of the Common Pleas, if he will, or out of the Chancery. 2 *H.* 6. 13. O

Quære, if Juſtices of Aſſiſe may award this Writ. 34 Ed. 3. Eſtrepment 14. 5 Ed. 2. Eſtrepment 11. Time of the

If a Man ſue a *Juris utrum* againſt ſeveral Tenants, as he may, or a *Scire facias* againſt ſeveral Tenants, there he may have an Eſtrepment againſt any of the Tenants, and not againſt them all. And ſo it ſeemeth if a *Formedon* be brought againſt two Tenants jointly, the Demandant may have an Eſtrepment againſt one Tenant only. P

Joint-tenancy at the Original is a good Plea; otherwiſe to ſay, that he was Joint-tenant at the Judgment given.

And in a *Juris utrum* ſued in *London*, a Man ſhall have a Writ of Eſtrepment directed to the Sheriff of *London*, as appeareth by the Regiſter. Q

Writ de Partitione facienda.

THE Writ *de Partitione facienda* is ſuch (*a*):

The King, &c. *If* A. *ſhall make you ſecure*, &c. *ſummon* B. *&c. to ſhew wherefore, ſeeing that the ſaid* A. *and* B. *hold together and undivided three Acres of Land with the Appurtenances in* I. *of the Inheritance which was* M.'s, *the Mother of the aforeſaid* A. *and* B. *whoſe Heirs they are, ſhe the ſame* B. *oppoſes making Partition thereof between them according to the Law and Cuſtom of our Kingdom of* England, *and does not permit it to be made, unjuſtly, as it is ſaid, and have you there the Summoners and this Writ. Witneſs*, &c. R

9 H. 5. 15. *Quære*, if Parceners of Lands in Tail ſhall have a Writ of Partition. [62.]

And if the Huſband hath one Part of the Land by Purchaſe, and the other Parcel in the Right of his Wife, and another Coparcener hath another Part as one of the Heirs of the common Anceſtor; then the Huſband and the Wife ſhall have a Writ of Partition againſt the third Coparcener, and the Writ ſhall be ſuch: S

The King to the Sheriff, &c. *If* I. *and* Mary *his Wife ſhall make*, &c. *ſummon* Margaret, *&c. to ſhew wherefore, ſeeing that the ſaid* I. *as in Right of her the ſaid* Mary, *of her Purparty happening to her of the Manor of* T. *which was* A.'s, *the Father of the aforeſaid* Mary, *one of whoſe Heirs ſhe is, and the ſame* I. *by virtue of a Feoffment made to him by* F. *another Daughter and Heir of the aforeſaid* A. *of the Purparty of her the ſaid* F. *happening to her of the ſame Manor, and the aforeſaid* Margaret, *the Daughter and third Heir of him the ſame* A. *hold together and undivided the Manor aforeſaid with the Appurtenances, ſhe the ſame* Margaret *oppoſes making Partition*, &c.

(*a*) If he counts of an Eſtate-tail in the Anceſtor, it is ſufficient without ſhewing the Commencement thereof, for in this Writ the Land is not in Demand, but only the Poſſeſſion affirmed (or aſcertained). *Dyer* 79. *b.*

And

A And there is a Rule in the Regiſter ſuch, that is to ſay, that *Anno* 12. at *York*, was ſealed a Writ *de Partitione facienda* betwixt Strangers; and there it was ſaid, that a Man ſhould have the ſame in every Caſe without *de Hæreditate* in the Writ: And it is there ſaid, that that Writ was never ſeen before. 34 Ed. 3. Partition 14.

B And if a Man will ſue a Writ of Partition for Lands in *London*, then he ſhall have a Writ unto the Mayor and Sheriffs of *London* in the Nature of an *Audita Querela*, and the Writ ſhall be ſuch:

The King to the Mayor and Sheriffs of London, *greeting: It is ſhewed unto us, on the Behalf of* S. *of* H. *and* I. *his Wife, that whereas they* R. *and* S. *hold, together and undivided, one Meſſuage with the Appurtenances in* London, *the ſame* R. *and* S. *oppoſe making Partition thereof according to the Law and Cuſtom of the ſame City, and permit not the ſame to be made, to the no little Damage and Grievance of them the ſaid* S. *and* I. *and contrary to the Cuſtom that has hitherto been held and approved in that City: Therefore we command you, that having heard the Complaint of them the ſaid* S. *and* I. *in this Matter, and having called before you* R. *and* S. *and, from hence, heard the Reaſons of the Parties thereupon, you further cauſe to be done to the ſame* S. *and* I. *in the Premiſſes, that which of Right, and according to the Cuſtom of the City aforeſaid, hath been done, and in the like Caſe hath hitherto been uſed to be done. Witneſs*, &c.

C And by that it appeareth, that by the Cuſtom of *London* one Joint-tenant, or Tenant in Common, ſhall have a Writ of Partition againſt his Companion.

And Partition may be made in the Chancery, where one of the Coparceners is in Ward to the King. 38 H. 6. 9.

D And Partition may be made of an Advowſon or of a Reverſion, that one ſhall have the Reverſion of ſuch Acres, and another ſhall have the Reverſion of other Acres; and ſuch Partition may be without Deed. 6 *Ed.* 3. 47. 11 H. 4. 61. 28 H. 6. 2. 9 Aſſ. 23. 3 Ed. 4. 9, 49.

E And it appeareth in 3 *Ed.* 4. that Tenants in Common may make Partition by Deed. 45 Ed. 3. Partition 7.

F And Partitions betwixt Huſbands and Wives ſhall bind the Wives, if they be equal. And by Partition made of a Manor without ſpeaking of the Advowſon, the Advowſon doth remain in Common. And Joint-tenants do make Partition of a Mill without Deed, and adjudged good. *Trin.* 47 *Ed.* 3. 5 *H.* 7. 22. 7 *Aſſ.* 19. 45 *Ed.* 3. 12. 9 H. 6. 5, 7. 19 H. 6. 25. 2 H. 7. 5. ac. 47 Ed. 3. 24. 3 Ed. 4. 9. 19 H. 6 25. that they cannot.

G (*a*) If one Coparcener doth leaſe her Part unto another Coparcener for Years, yet ſhe ſhall have a Writ of Partition againſt her Siſter during the Term of Years. 22 *Ed.* 3. 57. [17.] *Dyer* 52. 21 Ed. 3. Partition 9.

H After Partition in the Chancery, ſhe which is within Age, after ſhe cometh of full Age, if ſhe have too little, ſhall have a Writ *de Partitione facienda* 21 Ed. 3. 31. Partition 10. Thorpe.

(*a*) See 21 *Ed.* 3. 57. *a. b.* In a *Partic' faciend'*, by *A.* againſt *B.* who pleads, that the Plaintiff had leaſed to him his Purparty for five Years, and that, ſaving to him his ſaid Term, he is ready to make Partition, and always has ſo been, and his Proteſt was entered on the Roll. *Skipro.* to have Damages, replied, that he had not been always ready, *Et non allocatur.* For although he counts *ad Damnum*, yet no Damages ſhall be recovered, and therefore a Partition was awarded with a Saving of the Term, and by *Candiſh* the like Law is in a *Nuper obiit*, Account, *Perambulatione facienda.* But by *Strange* and *Martyn*, the Plaintiff ſhall recover Damages. 7 *H.* 6. 35: *b.*

The Remedy is only by Seire facias.

againſt her Siſter; or a *Scire facias*, upon the Record of the Partition in the Chancery, againſt her Coparcener, which ſhall be returned into the Chancery, *&c.* to ſhew wherefore new Partition or Extent ſhall not be made, *&c.*

10 Ed. 1. Partition 21. Co. Lit. 4. Hil. 34 Ed. Welden and Bridgwater's Caſe ac.

I And Partition betwixt Coparceners, that one ſhall have the Occupation of the Land from *Eaſter* until *Auguſt*, ſolely and in Severalty to herſelf, and then that the others ſhall occupy the Lands ſolely and ſeverally from *Auguſt* to *Eaſter*, yearly to them and their Heirs, is adjudged a good Partition in the Time of King *Ed.* 1. *Co. Lit.* 167. *b.*

Co. Lit. 4.a.

K And by the ſame Reaſon it ſeemeth a good Partition, if two Coparceners have two Manors by Deſcent, and they make a Partition, that one ſhall occupy one Manor one Year, and the other the other Manor for that Year, and then that he who occupied one Manor one Year, ſhould occupy the other Manor for the Year following; and ſo they and their Heirs ſhall change every Year, and occupy the Manor which the other Coparcener did occupy the Year before.

L And alſo Coparceners may make Partition for Term of Life, or for Years. 20 *H.* 6. 13. *Lit.* 57.

V. 57 Lit. ac. 20 H. 6. 14.

M And alſo Partition, that one ſhall have the Land which is intailed, and the other the Fee-ſimple Land, is a good Partition; and the Proceſs in this Writ is *Sum*', *Attachment* and *Diſtreſs* infinite (*a*).

(*b*) *Writ* de Excommunicato capiendo.

20 H. 6. 1. Not good by his ordinary Seal, 8 H. 6. 3. The Archdeacon doth certify, and it is ſaid, that he was Ordinary immediate, and yet it is doubted whether good or no, becauſe the King cannot have Benefit to ſeize Temporalties, for that he hath not Temporalties as a Biſhop hath.

N BEFORE this Writ ſhall be granted, the Contumacy and Contempt made by the Party unto Holy Church ought to be certified into the Chancery by the Biſhop by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Biſhop elect, before he be conſecrated: And alſo the ſame may be certified by Letters of the Chancellor or Vicar-General, when the Biſhop is beyond the Seas, or out of his Dioceſe, *in remotis agend*', *&c.* And although the Biſhop be in his Dioceſe, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Biſhop is *in remotis agend*', is good, and ſhall not be traverſed. And in time of Vacation of the Biſhoprick the Certificate ought to be made by the Guardians of the Spiritualties for the Time being, or by the Archbiſhop, *&c.* if he be Guardian of the Spiritualties.

O And upon this Writ he ſhall have an *Alias* and a *Pluries*, and if they are not anſwered, an Attachment againſt the Sheriff, directed unto the Coroners, returnable in the King's Bench.

(*a*) If there be Lord, three Coparceners meſnes, and a Tenant (of the Meſnalty) and one of the Coparceners purchaſes the Tenancy, this is not only a Partition of the Meſnalty being thereby extinguiſhed for a third Part, but it is alſo a Diviſion of the Seigniory paramount; for now the Lord muſt make ſeveral Avowries. See 36 *H.* 6. 7. *Co. Lit.* 167. *b.*

(*b*) *Paſ.* 24 *Car.* 2. *B. R.* (*L. R.* 130.) *Note*: By *Hale*, the Sheriff cannot break the Houſe on an *Excom*' *capiendo*.

And

A And if the Excommunicate hath made Satisfaction unto the Church for his [63.] Contumacy and Contempt, *&c.* then the Biſhop or Vicar-General, or the Guardian of the Spiritualties, *&c.* as before is ſaid, ought to certify to the King in the Chancery, that the Party hath made Satisfaction unto the Church for the Contempt, *&c.* and thereupon he ſhall have ſuch Writ to the Sheriff, *viz.* (*a*)

The King to the Sheriff of Lincolnſhire, *greeting: Whereas we commanded* S. *and* I. *who by the Denunciations of the Dean and Chapter of the Church of the bleſſed* Peter *of* York *(the See being vacant)*; or thus, *by the Denunciations of the worſhipful Father* A. *Biſhop of* Wincheſter, *as excommunicated Perſons, and contemning the Keys, to have Juſtice done them by you by their Bodies according to the Cuſtom of* England, *until they ſhould make Satisfaction to Holy Church, as well touching the Contempt as the Injury to it by them committed*; *and now from them the Dean and Chapter*; or thus, *from him the ſaid Biſhop, they have deſerved to obtain the Benefit of Abſolution in Form, as they the ſaid Dean and Chapter have ſignified to us by their Letters Patent*; or thus, *as he the ſaid Biſhop hath ſignified to us*, &c. *We command you, that without Delay you cauſe that they the ſaid* S. *and* I. *be delivered out of the Priſon wherein they are detained, if they are detained in the ſame upon that and no other Occaſion*, &c.

B And if the Sheriff will not execute that Writ, he ſhall have an *Alias* and a *Pluries*, and Attachment againſt the Sheriff, directed unto the Coroners, returnable into the King's Bench.

C And if the Party excommunicated, who is ſo taken and in Priſon, offer ſufficient Caution or Surety, to abide the Ordinances and Rules of the Holy Church, and the Judges there and the Ordinary do refuſe for to take ſuch Caution or Surety, then he may have another Writ unto the Biſhop to admit of his Caution, and the Writ is ſuch:

(*b*) *Writ* de Cautione admittenda.

THE *King to the Worſhipful*, &c. *Whereas we commanded* A. *as one by your Denunciation excommunicated, and contemning the Keys of the Church, to have Juſtice done to him by his Body by our Sheriff of* Lincoln, *according to the Cuſtom of* England, *&c. until he ſhould have made Satisfaction to Holy Church*, &c. *It is ſhewed unto us, on the Behalf of the ſaid* A. *that although the ſame* A. *hath frequently offered to you fit Caution to obey the Commands of the Church in Form of Law, that he might by this be able to obtain the Benefit of Abſolution: Nevertheleſs you have hitherto refuſed to admit from him ſuch Caution*, *at which we wonder: And becauſe we will not that the ſame* A. *be longer detained in Priſon*

(*a*) See *Lib. Parl.* 25 *Ed.* 3. *n.* 31. A Petition, that no *Excommunicato cap'* ſhall iſſue before a *Scire facias* againſt the Party, to know whether the Caſe be Lay, that ſo the Party may reverſe it, if the Matter be Lay, or ſhew the Matter where the *Excom' cap'* is pleaded againſt him: But it ſeems the Keepers of the King's Conſcience at that Time were ſuch, that both were there denied. Though it is hoped Mankind will at length have their Eyes opened to ſee the Miſchiefs occaſioned by this Writ. *W. Bohun.*

(*b*) See *Bacon of Government* 113. touching this Writ.

contrary to Juſtice, we command you, that having accepted the Caution aforeſaid from the aforeſaid A. *you command him the ſaid* A. *to be delivered from* (*a*) *the Priſon wherein he is detained by occaſion of the Premiſſes, otherwiſe we ourſelves will execute that which is ours in this Behalf.*

D And if the Biſhop will not ſend unto the Sheriff to deliver the Perſon ſo excommunicated, then he ſhall have ſuch a Writ out of the Chancery for to deliver him.

The King, &c. *On the Behalf of* A. *who by the Denunciation of the Worſhipful*, &c. and rehearſe the Writ ſent before unto the Biſhop for Deliverance of the Priſoner, *&c. And becauſe we will not that the ſame* A. *be detained longer in Priſon contrary to Juſtice, we command that you go in your own Perſon to the aforeſaid Biſhop, and on our Behalf adviſe and effectually direct him, that having accepted the Caution aforeſaid from the ſame* A. *he command him the ſaid* A. *to be delivered from the Priſon aforeſaid. And if the ſaid Biſhop or the Keeper will not do it in your Preſence, then do you cauſe him the ſaid* A. *to be delivered out of the Priſon aforeſaid, if he be detained in the ſame upon that and no other Occaſion. Witneſs*, &c.

E And upon this Writ he ſhall have an *Alias* and a *Pluries* unto the Sheriff; and if he do not ſerve the Writs, he ſhall have Attachment againſt the Sheriff, but ſo ſhall he not have againſt the Biſhop, *&c.*

F And if the Biſhop do certify by his Letters into the Chancery, that he hath ſent unto his Official or Archdeacon to abſolve the Party excommunicate, then the Party ſhall have a Writ unto the Sheriff rehearſing theſe Letters, *&c. We command you, that without Delay you cauſe the aforeſaid* A. *to be delivered out of the Priſon wherein he is detained, when it ſhall appear to you that he is abſolved from his Excommunication by the aforeſaid Official or Archdeacon, if he be detained in the ſame upon that and no other Occaſion. Witneſs*, &c.

And upon that Writ he ſhall have an *Alias*, *Pluries*, and Attachment againſt the Sheriff, if he do not ſerve the Writ.

G And yet it ſeems that the Official or Archdeacon to whom the Biſhop hath ſent his Letters to abſolve the Party, is not bound to certify the Sheriff, that he hath ſuch Letters; but the Sheriff ought to go or ſend to them to know the Truth thereof, and thereupon to deliver the Party: And the Biſhop, or he who excommunicated him, and upon whoſe Certificate the Party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Regiſter.

H And if a Man be excommunicated, and taken by a *Significavit*, and after offers Caution unto the Biſhop to obey the Church, and the Biſhop do refuſe, for which he ſueth a Writ to the Sheriff to go unto the Biſhop, and to warn him to take Caution, *&c.* now if the Biſhop think in his Conſcience, or ſtandeth in Doubt whether the Sheriff will deliver him by that Writ, the Biſhop may purchaſe another Writ directed to the Sheriff reciting the Caſe, and in
[64.] the End thereof, *We command you, that by no means you deliver him the ſaid* A. *from the Priſon aforeſaid, unleſs at leaſt he offers Caution by Pledges in your Preſence to ſatisfy the ſame Biſhop, without the ſpecial Mandate of us or of him the ſaid Biſhop in this Behalf. Witneſs*, &c.

(*a*) See *Rot. Clauſ.* 7 *H.* 3. (5.) *m.* 2. *tunc, &c. infra Eccleſiam abſolvere vetitis. Quære* the Canons *Temp. H.* 1.

A And if the Biſhop do take Caution of the Party to obey Holy Church, then the Biſhop may certify the ſame into the Chancery, and thereupon the Party ſhall have a Writ unto the Sheriff for to deliver him.

B And if the Sheriff do deliver ſuch Perſons excommunicate without Order Regiſter 67.
of Law, then upon Complaint of the Biſhop into the Chancery, he ſhall have 1 Lutw. 125.
a new Writ unto the new Sheriff rehearſing the Matter, commanding him to take the ſaid Perſon, and to detain him in Priſon; and alſo in the ſame Writ he ſhall command the Sheriff to make the old Sheriff to anſwer the King in his Bench for the Contempt: And if the Sheriff who ſetteth the Party at large be yet Sheriff, then it ſeemeth the Writ ſhall be awarded unto the Coroners to apprehend the Party excommunicated, and to cauſe the Sheriff to appear, *&c.* as before is ſaid.

C And if a Man be excommunicated before the Chancellor of *Oxford*, *&c.* and the Chancellor doth certify this Excommunication into the Chancery, *&c.* upon the ſame Certificate the King ſhall award a *Significavit* unto the Sheriff to apprehend the Party; and the Writ ſhall be ſuch: *Whereas of our eſpecial Favour we have granted,* (*a*) *that the Chancellor of the Univerſity of* Oxford *for the Time being may ſignify and certify by his Letters Patent to our Chancellor of* England *for the Time being, of the Names of all Perſons of the Juriſdiction of the ſaid Chancellor of* Oxford, *who are tied in the Bond of the greater Excommunication, and that our ſaid Chancellor for the Time being may cauſe our Writs to be made and ſealed under our Great Seal, for the taking of them who ſhall thus by the ſaid Chancellor of* Oxford *be excommunicated, and ſhall continue ſo for forty Days* (*b*) *upon the* Significavit *or Certificate of him the ſaid Chancellor of* Oxford *aforeſaid, as in our Letters Patent thereof made is more fully contained; and* John F. *Chancellor of the Univerſity aforeſaid,* &c. *by his Letters,* &c. *that* W. *of* B. *&c. of his Juriſdiction for his,* &c. as in the Writ. And *quære* if the Univerſity of *Cambridge* have ſuch Privilege; it ſeemeth they have.

D If a Man be ſued in the Spiritual Court, and he purchaſe a Prohibition and deliver the ſame, and notwithſtanding they proceed, for which Cauſe the Defendant ſueth an Attachment upon the ſame Prohibition, and pendent the Attachment the Defendant in the Spiritual Court is excommunicated, and the ſame certified into the Chancery, by reaſon whereof a *Significavit* is awarded
unto the Sheriff againſt the Defendant for to take him: Now the Defendant 2 H. 4. 5.
may come into the Chancery, and ſhew how that he had a Prohibition, and an Attachment thereupon againſt the Party, and that pendent the Attachment he is excommunicated, and the *Significavit* awarded to take him. (*c*) Now upon that he ſhall have a *Superſedeas* directed unto the ſame Sheriff, reciting

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(*a*) *Vide Lib. Parl. Ed.* 1. 194. *Rot. Pat.* 9 *Ed.* 3. *Pars* 1. *m.* 10. *Pat.* 12 *Ed.* 3. *Pars* 2. *m.* 8. *Pat.* 14 *Ed.* 1. *Pars* 1. *m.* 47. *Pat.* 21 *Ed.* 3. *Pars* 3. *m.* 22. *Pat.* 26 *Ed.* 3. *Pars* 1. *m.* 24.

(*b*) See 20 *H.* 6. 25. That within the forty Days there might be an Appeal to the Court of *Rome.*

(*c*) See the like Writ, *Rot. Clauſ.* 7 *H.* 3. *m.* 6. *Quia conſtat nobis in Mandatorio noſtro nos fuiſſe Circumventos.*

all the Matter, commanding him not to take him; and if he do take him for the Occaſion aforeſaid, that he deliver him *donec Placitum dicti Attachiament' fuerit diſcuſſ'*, *&c.* And this Writ ſhall iſſue out of the Chancery, (*a*) if the Attachment be not returned into the King's Bench. But if the Attachment be returned into the King's Bench, then he ſhall have this Writ of *Superſedeas* out of the King's Bench, or out of the Chancery, at his Pleaſure. And it ought to appear by the Certificate of the Biſhop, that he hath been excommunicated by the Space of forty Days, before the *Significavit* ſhall be awarded.

E And if a Man be ſued in the Spiritual Court, or the Biſhop ſue or cite him *ex Officio*, and excommunicate him, and certify the ſame into the Chancery, and upon the ſame a *Significavit* is awarded unto the Sheriff for to apprehend him, *&c.* and afterwards the Official by Letters certify into the Chancery, that he hath appealed from that Sentence unto the Court of *Rome*, or unto the Court of *Canterbury*, *&c.* then upon that Certificate he ſhall have a Writ of *Superſedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pending the Appeal in the Buſineſs abovesaid*; or thus, to ſurceaſe, *until we ſhall have ordained otherwiſe from our Council, or until ſuch a Day*; or thus, to ſurceaſe, *&c.* and he hath apprehended him *on that Occaſion, then that he cauſe him to be delivered out of the Priſon aforeſaid*, &c. *wherein*, &c.

And after the *Significavit* awarded againſt the Party, if he bring the Pope's (*b*) Bulls into the Chancery, teſtifying that he hath appealed from that Sentence, *&c.* he ſhall thereupon have a *Superſedeas* unto the Sheriff; and in the *Superſedeas* it behoveth not to make mention of the Pope's Bulls, but to ſay, *That as by certain publick Inſtruments*, &c. And he ought to prove his Diligence in ſuing his Appeal by Witneſſes, or by Oath, and within the Year of the Time of his Appeal ſued. And the Rule in the Regiſter is, Writs of *Superſedeas (hanging Appeals) ought not to be*; if it do not appear upon Record in the Chancery that the *Significavit* is granted and paſſed, *&c.*

F And this Writ of *Significavit* doth not lie but where a Man is excommunicated by a ſpecial Name, and in a ſpecial Suit againſt him by the Ordinary *ex Officio*, or by the Party; for that is called *the Sentence of the greater Excommunication*, and upon Certificate thereof in the Chancery doth the Writ lie. But

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(*a*) But yet by *Morris* and *Thorp*, in the like Caſe, they would not grant a *Superſedeas* out of Chancery, while the Common Pleas, where the Attachment is returnable, is open. 38 *Ed.* 3. 14.

(*b*) So that an Appeal to *Rome* was ſufficient for a *Superſedeas*. 20 *H.* 6. 26. Yet a Repeal of an Excommengement made by Judges delegated by the Pope was not ſufficient to make one reſponſible againſt a Certificate of Excommunication by the Archbiſhop. 16 *Ed.* 3. *Excom'* 4. And *Note* well 14 *H.* 4. 14. where on a Sentence given at the Court of *Rome*, a Delegacy was made to the Archbiſhop of *Canterbury*, to execute the Excommengement, yet the Party was ſtill reſponſible, for that the Archbiſhop did this not as Archbiſhop or Judge, but only as an Officer, and therefore he cannot abſolve him till Agreement made with the Party. See *Rot. Parliament.* 8 *Ed.* 2. *m.* 7. *Petitio Abbatis de Rufford.*

where he is not eſpecially excommunicated, *&c.* (*a*) although that the Biſhop certify that he is excommunicated *in the Sentence of Excommunication*, upon that this Writ of *Significavit* doth not lie, for they ought to expreſs the Cauſe, and ſue againſt him ſpecially in the Certificate.

Upon an Excommengement certified by the Pope's Bulls, a *Significavit* ſhall not be granted.

[65.]

If a Biſhop certify an Excommengement into the Chancery, made in Time of his Predeceſſor, and the Contumacy, *&c.* he ſhall have a *Significavit* thereupon: But upon the Certificate of the Commiſſary (*b*), or Official, of an Excommengement in the Chancery, and of the Contumacy, a *Significavit* ſhall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Juriſdiction, of an Excommengement in Chancery, a *Significavit* ſhall not be granted.

12 Ed. 4. 15, 16.
14 H. 4. 14.
8 H. 6. 3.
20 H. 6. 1.
7 Ed 4. 14.

A If a Biſhop certify in Chancery, that another Biſhop hath certified him that the Party is excommunicate in his Dioceſe, and ſo hath remained by the Space of forty Days; the ſame Certificate is void, and a *Significavit* ſhall not be granted thereupon.

B If a Man be excommenged in the Spiritual Court, and the Biſhop certify the ſame in the Chancery, and hath a Writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of *Rome*, and hath Bulls and Inſtruments exhibited into the Chancery to prove the ſame; then upon theſe Bulls, *&c.* ſhewed in Chancery, he ſhall have a ſpecial *Scire facias*, rehearſing all the Matter, directed unto the Sheriff, to warn the Party at whoſe Suit he was excommunicated to appear in the Chancery at a certain Day, to ſhew Cauſe why he ought not to ſurceaſe to apprehend the Party ſo excommunicated depending the ſame Appeal; and alſo commanding the Sheriff to take ſufficient Sureties, who will anſwer Body for Body, for him who is ſo excommunicated, to purſue, *&c.* and to do unto the Party as the Court ſhall award, and that then he do ſurceaſe to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the Party, and hath ſent that Writ unto the Bailiff of the Liberty, who had given him Anſwer, that he had warned the Party at whoſe Suit he

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(*a*) *Nota; Excommunicatio aut fertur a jure, & tunc eſt pœna delict', vel ab homine & tunc eſt pœna Contumaciæ in non veniendo vel parendo, utraq; autem vel* Major *quia privat a Receptione Sacramentor' & ab hominum conſortio qualis eſt hodie in uſu*, and is commonly called at this Day, *Ex ommunicatio vel* Minor *quæ excludit a Præcept' Sacramentor' eſtq; lata vel a lege ut per Excommunicationem Excommunicato, vel ab homine licet raro.* Lib. de Rubric. de Sententia Excom'. *Note*; In certifying an Excommengement, the Cauſe muſt be expreſſed, and if not ſufficient, the Party ſhall have a Writ out of Chancery to aſſoil him. 14 *H.* 4. 14. It ſeems the Cauſe need not be certified, but where a Prohibition is brought againſt the Biſhop; but on a general Certificate it ſhall be intended to be for the ſame Cauſe as is in the Prohibition. 28 *Ed.* 3. 97. *a.* 22 *Ed.* 4. 20. *a.* 20 *Ed.* 3. *Excom.* 9. 15 *H.* 7. 16. See 3 *H.* 4. 3. *b.*

(*b*) See 11 *H.* 4. 64. *a.* by *Hankf.* at the ancient Common Law, a Commiſſary might certify Excommunication; but he was reſtrained by Parliament.

And note the Cauſe why none inferior to a Biſhop can invoke the Aid of the temporal Arm, *Lindw. de Senten' Excom' cap' Præterea, &c.* See 11 *H.* 4. 64. 7 *Ed.* 4. 14. but otherwiſe of committing of Adminiſtrations or Probate of Wills.

was ſo excommunicated, to appear in the Chancery at the Day given by the Writ, *&c.* Now if the Party who was returned warned doth not come to appear, then he who was excommunicated ſhall have another Writ unto the Sheriff for to deliver him, *&c.* if he hath apprehended him; and if he hath not taken him, that he do ſurceaſe for to apprehend him, *&c.*

C And if a Man be excommunicated by the Biſhop, and after the Vicar-General certifieth the ſame into the Chancery, becauſe the Biſhop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended, by his Friends ſheweth in the Chancery how that he hath appealed unto the Court of *Canterbury*, which he followeth with Effect: Upon this Surmiſe he ſhall have a Writ unto the Sheriff, who hath the Party excommenge in his Cuſtody, commanding him that he warn the Biſhop or the Vicar-General, and him who ſued the Proceſs againſt the Party excommenge to appear in a certain Day in the Chancery, to ſhew wherefore the Party ſhould not *(pending the Appeal)* be delivered; and alſo to cauſe the Party excommenge under ſafe Cuſtody to come, and to do as the Court ſhall conſider in the ſaid Cauſe.

D If the Biſhop do excommunicate a Man, and certifieth the ſame into the Chancery, and thereupon a *Significavit* is awarded, and the Party taken thereby, and he ſueth Appeal in the Court of *Canterbury*, or of *Rome*, *&c.* and hath a *Scire facias* againſt the Biſhop as aforeſaid, and againſt the Party, to anſwer in Chancery, and ſhew Cauſe why he ſhould not be delivered; by which the Biſhop and the Party are warned, and appear not, for which Cauſe the Party is delivered: Now if he who is excommunicated will ſue any Action in the Common Pleas, or in the King's Bench, or elſewhere, if he think the other Party will plead the Excommunication againſt him in the Common Pleas, or elſewhere, then he ſhall have a ſpecial Writ of *Significavit* unto the Juſtices of the Court where he ſueth, rehearſing all the Matter as aforeſaid, *&c.* commanding them to proceed *according to the Law and Cuſtom of the Realm.*

E If the Biſhop certify into the Chancery an Excommunication made at the Suit of any one, and thereupon a *Significavit* is awarded, and the Party apprehended; now he who is apprehended may by his Friends ſhew in the Chancery, that he ſued an Appeal from that Sentence in the Court of *Canterbury* with Effect, and by *Scire facias* againſt the Biſhop, and the Party at whoſe Suit he was excommunicated, returned at a certain Day into the Chancery: And thereupon he ſhall have a Writ unto the Sheriff, rehearſing all the Matter, commanding him thereby to warn the Biſhop and the Party to be in the Chancery at the Day of the Return of the Writ, to ſhew what they can ſay, wherefore the Party ſhall not be delivered; and alſo by the ſame Writ commanding the Sheriff, that he take ſufficient Sureties of the Party excommunicated to appear in the Chancery at the ſame Day, and to carry him back again unto Priſon, if the Court at the ſame Day ſhall ſo think fit; and in the mean time to let him go at large by his Sureties, *&c.* and then if at the Day of the Return of the Writ the Party excommunicated doth not appear, nor his Bail, then ſhall a new Writ be awarded unto the Sheriff to apprehend the Party excommunicated again, *&c.* *until Satisfaction ſhall be made* *by him to Holy Church, as well for the Contempt as the Wrong*; and alſo to arreſt the Bail to appear before the King in his Bench at a certain Day, *&c. as well to ſatisfy us as the aforeſaid Biſhop*, and him at whoſe Suit he was excommunicated; and farther to do as the Court ſhall award. And if at the Day given in Chancery by the Writ of *Scire facias* the Biſhop, and the Party at whoſe Suit he was excommunicated, do appear, and alſo he who was excommunicated, and the Matter cannot be determined that Day; then Day ſhall be given over unto both Parties, at a certain Day at another Term, *&c.* and then the Party excommunicate ſhall have a ſpecial *Superſedeas* unto the Sheriff, rehearſing the whole Matter, commanding him that he do not apprehend him till that Day, *&c.* if he have not other Commandment from the King, *&c.*

A There are other Writs in the Regiſter, which are called Writs of *Significavit*, becauſe they ſhall not be granted before that the Biſhop hath made Certificate by his Letters under his Seal of the Matter in the Chancery, upon the which the Writs ſhall be ſo granted. And the Writ is, where a Man is a Clerk convict of Felony, and afterwards makes his Purgation; now the Biſhop ſhall certify this Purgation into the Chancery by his Letters, *&c.* and thereupon the Clerk convict ſhall have a ſpecial Writ out of the Chancery, directed unto the Sheriff, to reſtore him to his Goods and Chattels. [66.]

The King to the Sheriff of Lincolnſhire, *greeting: Whereas* C. *of* P. *Parſon of the Church of* R. *lately convicted of Raviſhment of the Wife of* S. *and of carrying away his Goods, being delivered to the Biſhop, as the Manner is, hath there lawfully purged his Innocency touching the ſame Crime before the ſaid Ordinary, as the ſame Biſhop hath ſignified to us by his Letters Patent; We of our ſpecial Grace command you, that without Delay you reſtore to the ſame* C. *his Lands, Goods and Chattels by you taken into our Hand, by occaſion of the Premiſſes, unleſs he fled upon that Occaſion. Witneſs*, &c.

And the like Writ for the Heir of the Clerk after his Death, to deliver the Lands unto him, *&c.* and in the End of the Writ are theſe Words, *Without Delay of our ſpecial Grace*, by which it ſeemeth that theſe Words, *Of our ſpecial Grace*, are not neceſſary Words, but Words of Form for the King's Honour, and that the King of Right ought to make ſuch Reſtitution.

B And if a Man do demand his Clergy before the Juſtices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Juſtices command the Clerk to Gaol again, *&c.* now at the Suit of the Ordinary, or of his Vicar-General, unto the King, or his Chancellor, he ſhall have a Writ out of the Chancery directed to the Juſtices of Gaol-Delivery reciting the Matter, commanding them that they ſend unto the Gaoler to deliver him unto the Ordinary. Clergy. Vide 4 Ed. Dyer 215. Stamf. 108.

C And if a Man be taken out of a Church, or out of Sanctuary againſt his Will: Now if the Biſhop certify the Matter by his Letters Patent under his Seal into the Chancery, *&c.* deſiring Reſtitution; then the King ſhall ſend his Writ unto the Juſtices of Gaol-Delivery reciting the Matter, commanding them to bring back the Party to the Place from whence he was taken. Sanctuary.

If an Abbot or Prior certifieth by his Letters under his Seal, that his Monk, D
Friar, Canon, is vagrant out of his Order, *&c.* in the Country; then upon that Certificate he ſhall have a Writ unto the Sheriff, to arreſt and apprehend him, and to deliver him unto his Abbot or Prior, *&c.* or to their Attorney, to chaſtiſe him according to the Rule of his Order, *&c.*

Writ de Homine replegiando.

Stamf. 71. IN divers Caſes a Man ſhall not have this Writ, although he be taken and E
detained in Priſon: As if a Man be apprehended for the Death of a Man,
or be taken by the King's Command; (*a*) or if a Man be apprehended by
the Command of the Chief Juſtice, as it appeareth by the Regiſter. But the
Weſt. 1. c. 5. Statute of *Weſt.* 1. is, That he ſhall not be repleviſable, if he be taken by
the Command of the Juſtices, and doth not ſay of the Chief Juſtice.

And alſo if a Man be taken by the Command of the Juſtices of the Foreſt,
or if a Man be outlawed, or if a Man abjure the Realm, or if a Man be
Approver, or if a Man be taken for Felony with the Manner; or thoſe who
break the King's Priſon, or thoſe who are common or known Thieves, or thoſe
who are appealed by Approver ſo long as the Approvers live, if they be not of
good Fame, or for burning of Houſes feloniouſly, or thoſe who counterfeit
the King's Money, or the King's Seal, or thoſe who are taken by Certificate
Poſt. 189. of the Biſhop by a Writ *de Excommunicato capiendo*, or thoſe who are appre-
hended for Treaſon, or thoſe who are convict by a Writ of *Rediſſeiſin*, &c.
all theſe Perſons are not bailable by this common Writ *de Homine replegi-
ando.* But firſt they ought to make their Fines, or agree with the King, and
thereupon to have a ſpecial Writ to the Juſtices, or thoſe who do keep them
in Priſon, reciting how they have been fined, commanding them for to de-
liver them.

8 H. 4. 21. (*b*) And if two or three Men be taken and impriſoned, they may ſue a F
but 8 H. 4. 16. joint Writ *de Homine replegiando.* And yet *H.* 8 *H.* 4. 31. ſuch a Writ ſued
contra. by two was abated; but yet it ſeems the Law is, they may ſue jointly, and
See 78. D. & 9 H. 4. 2. the Writ ſhall be ſuch:

The King to the Sheriff of Lincolnſhire, *&c. We command you, that juſtly and without Delay you cauſe to be replevied* B. C. *and* D. *whom you yourſelf have taken, and doſt keep taken, as it is ſaid; or, whom* D. *and* E. *have taken, and do keep taken, as it is ſaid, unleſs they were taken by the ſpecial Command of us, or of our Chief Juſtice, for the Death of Man, or for our Foreſt, or for any other Right for which they may not be replevied according to the Cuſtom of* England, *that we may hear no more Clamour thereupon for want of Juſtice. Witneſs*, &c.

(*a*) See 14 *H* 6. 8. A Diverſity where one is impriſoned on a Suggeſtion without Writ, as by Juſtices of Peace, Magiſtrate of a Town, or Lord of a Vill or Manor, on the Statute of Labourers, *&c.* there he may be diſcharged by them without any Writ from the King; but it is otherwiſe if they are impriſoned by Writ.

(*b*) See accordant 8 *Ed.* 4. 16. *a.* 12 *Ed.* 4. 4. *con.* 8 *H.* 4. 21. *b.*

And upon that he ſhall have an *Alias* and *Pluries*, and Attachment, if need be. But if he who apprehendeth the Man do claim him as his Villain, and the ſame is returned by the Sheriff upon the *Alias* or the *Pluries*, then the Plaintiff ſhall have another Writ of *Pluries* to the Sheriff, thus:

The King to the Sheriff, &c. *Whereas we have oftentimes commanded you, that juſtly*, &c. W. *whom* H. *took, and keeps taken, as it is ſaid, unleſs he was taken*, &c. *and be not repleviſable, or that you ſhould ſignify to us the Cauſe wherefore*, &c. *and you have returned to us, that you went to the Manor of the aforeſaid* H. *there to replevy the aforeſaid* W. *according to the Tenor of our Command aforeſaid; but the aforeſaid* H. *hath not permitted Delivery of the Body of him the ſaid* W. *to be made, becauſe he affirmeth him the ſaid* W. *to be his Villain and Fugitive of his Manor aforeſaid, by claiming Right of Villainage and Servitude in the Perſon of him the ſaid* W. *within the Dominion of his Manor*, &c. *We being unwilling that the aforeſaid* W. *if he be a Freeman, ſhould be deſtitute of the Common Law by ſuch Taking and Claim, command you, that if the aforeſaid* W. *ſhall find you ſufficient Caution*, &c. *to be before us from the Day of Saint* Michael *in fifteen Days*, &c. *to anſwer the aforeſaid* H. *if*, &c. *then cauſe him the ſaid* W. *in the mean time to be replevied according to the Tenor of our Commands*, &c. *And nevertheleſs, if the aforeſaid* W. *ſhall make you ſecure touching his Claim*, &c. *then put by Gages*, &c. *the aforeſaid* H. *that he be before us on the aforeſaid Day to anſwer the aforeſaid* W. *of the Taking and Claim aforeſaid: And have you there the Names of the Pledges and this Writ*, &c. [67.]

And in the ſame Manner it ſhall be done in a *Homine replegiando:* If the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff ſhall have a ſpecial Writ as aforeſaid, reciting that he holdeth the ſame Land of the Defendant by Socage, and not by Knights Service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain Day, as afore is ſaid, to anſwer unto the Plaintiff, *&c.* 11 H. 4. 25.

A And if a Man be taken within the Cinque Ports, then he ſhall have a Writ *de Homine replegiando*, directed unto the Conſtable of *Dover*, and unto the Warden of the Cinque Ports, or his Lieutenant, in the Nature of an *Audita Querela*, and the Writ ſhall be,

The King to his beloved, &c. *Conſtable of his Caſtle of* Dover, *&c. and to the Warden of his Cinque Ports, or his Lieutenant, greeting: We command you, that having heard the Complaint of* A. *whom* B. *took, and keepeth taken within the Liberty of the Ports aforeſaid, as it is ſaid, and having called before you the Parties aforeſaid, and having heard their Reaſons ſeverally thereupon, you cauſe him the ſaid* A. *to be replevied, if he be repleviſable according to the Law and Cuſtom of the Ports aforeſaid, unleſs he be taken by the ſpecial Command of us or of our Chief Juſtice*, &c. *that we may hear no more Clamour thereupon for want of Juſtice*, &c.

And if a Man be taken by the Officers of the Foreſt, then he ſhall have a Writ *de Homine replegiando* unto the Keeper of the Foreſt, in ſuch Form, *viz.*

The King to his beloved and faithful W. *of* B. *Keeper of his Foreſt on this Side* Trent, *or his Lieutenant in the Foreſt of* S. *We command you, that if* A. *and* B. *taken and detained in the Foreſt of* S. *for Treſpaſs of Veniſon by them done, as it* *is ſaid, whereof they are indicted, ſhall each of them find you (to wit) twelve honeſt and lawful Men of your Bailiwick, who ſhall be Mainprize, to have them before our Juſtices* (*a*) *next in Eyre at the Pleas of the Foreſt in the County of* N. *when they ſhall come into thoſe Parts, to ſtand to the Right touching the Treſpaſs aforeſaid; then in the mean time that you deliver them the aforeſaid* A. *and* B. *in Bail to the aforeſaid twelve Men, as is before ſaid, if according to the Aſſiſe of the Foreſt they ſhall be repleviſable: And have you there the Names of thoſe twelve Men and this Writ. Witneſs*, &c.

And if the Warden will not bail him, he ſhall have an *Alias* and *Pluries* B
againſt the Warden, directed unto the Sheriff, to attach him to anſwer before
the King in his Bench, and to ſhew wherefore he has not replevied him, *&c.*
And in the ſame Writ it ſhall be contained, that he call to him the Verderors,
to deliver him who is ſo taken in the Preſence of the Verderors by good
Bail, and that the Sheriff do deliver the Names of the Bail unto the ſame C
Verderors, to anſwer before the Juſtices in the next Eyre. And no Man ſhall
be taken nor impriſoned for Vert or Veniſon, if he be not found in the Manner,
or indicted; in which Caſe he ſhall be ſet to Bail by the Warden *ex
Officio*, or otherwiſe by Writ, as is aforeſaid, *&c.*

For hunting in the King's Chaſes, or in the Chaſes of other Men, he ought D
to be ſued at the Common Law; and for the ſame a Man ſhall not be taken
and impriſoned, until he be convicted at the Common Law in an Action there
brought againſt him. But for hunting in Parks, *&c.* the Party ſhall have an
Action within the Year and Day upon the Statute of *Weſt.* 1. *cap.* 20. But
after the Year and Day the King ſhall have Suit.

Replevin of a Park.

And if a Man hath any Park within the Bounds of any Foreſt, which Park E
is not incloſed according unto the Aſſiſe of the Foreſt, *&c.* then it ſhall be
ſeized into the King's Hands; and then the Party ſhall have a ſpecial Writ of
Replevin, to replevy a Park out of the King's Hands: And the Writ is ſuch;

The King to his beloved and faithful W. B. *Keeper*, &c. *or to his Lieutenant in the Foreſt of* S. *greeting: We command you, that you cauſe to be replevied the Park of* A. *of* B. *and* J. (*to the ſame* A. *until the Coming of the Juſtices of the Pleas of the Foreſt in the County aforeſaid*) *which is within the Boundaries of our Foreſt aforeſaid, and which is ſeized into our Hand, becauſe it is not incloſed according to the Aſſiſe of the Foreſt, as it is ſaid, if it be repleviſable according to the Aſſiſe of the Foreſt. Witneſs*, &c.

5 H. 7. 3. 13 H. 7. 17. but the better Opinion is, that it is in the Judges Diſcretion. But 6 Ed. 4. 8 & 12 Ed. 4. 4. that he ſhall not find Surety.

In a *Homine replegiando* the Defendant claims the Plaintiff for his Villain, F
and the Plaintiff pleads that he is free, and ſaith that the Defendant hath
taken his Goods, and prays that he may gage Deliverance, *&c.* for which
the Defendant doth gage Deliverance. But the Plaintiff ſhall not find Sureties
that he ſhall re-deliver the Goods, *&c.* if he be found Villain. *Quod vide
M.* 6 *Ed.* 4. 8.

But in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Vil- G
lain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant,
if he be found his Villain. *Quod vide P.* 31 *Ed.* 3.

(*a*) See *int' Rotl' Ordinationum anno* 5 *Ed.* 2. of Indictments of the Foreſt.

A In a *Homine repleg'* the Plaintiff was bound in a Recognizance in a certain Sum of Money unto the Defendant's Uſe, that he would ſue him *cum effectu*; and if the Writ be abated for any Cauſe, yet he ought to ſue another Writ for that Taking, *&c.* otherwiſe he ſhall forfeit that Recognizance, as it appeareth. *H.* 8 *H.* 4. [68.]

B If a Man ſue a *Homine repleg'*, and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the ſame upon the *Alias*, or upon the *Pluries*, in the King's Bench or Common Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, *&c.* he ſhall have a ſpecial Writ unto the Sheriff for to deliver the Plaintiff out of Priſon, *&c.* But by the Regiſter he ſhall have a ſpecial Writ unto the Sheriff to take Sureties of the Plaintiff, and to ſue with Effect, and to yield his Body, if, *&c.* But the Uſage at this Day is, that he find Sureties in Court, *&c.* and not to award a Writ unto the Sheriff to take Sureties. *Quod vide M.* 8 *H.* 4. 3.

C And in a *Homine repleg'*, if the Sheriff return that the Defendant hath eſloined the Plaintiff's Body, ſo that he cannot deliver him; then the Plaintiff ſhall have a *Capias in Withernam* to take the Defendant's Body, and to keep the ſame *quouſque*, *&c.* (*a*) whether he be a Peer of the Realm, or other common Perſon. And if the Sheriff return *Non eſt inventus* in this *Capias in Withernam* of the Body, then the Plaintiff ſhall have a *Capias in Withernam* againſt the Defendant's Goods, *&c.* *Quod vide M.* 11 *H.* 4. in Title of *Withernam.* 11 H. 4. 15. b.

(*b*) *Writ* de Replegiare de Averiis.

D IF a Man take more live Cattle than one Beaſt, then the Writ is ſuch:

(*a*) A *Capias* lies againſt a Peereſs of the Realm on a Reſcous, returned made by the Baron. 1 *H.* 5. 14. *a.*

(*b*) *Note*; A Replevin is Viſcontiel by reaſon of this Clauſe, *Et poſtea eam inde juſte deduci fac'.* But by the *Pluries;* without Queſtion the Sheriff's Power to proceed in the County Court is determined; as was clearly held by all. If the Sheriff does not execute the Writ, but returns *Elongata,* it was doubted if the Sheriff ſhall execute the Writ, by reaſon the Words (*vel ipſe ſit*) are Conditionals. 2 *H.* 7. 5.

Note; on the *Pluries* the Parties have no Day in Court, but only the Sheriff; yet he may return Pledges on the *Pluries*, or on the Replevin if it be found; and yet the Plaintiff may come at the Return of the *Pluries*, and take Iſſue on the Cauſe returned by the Sheriff, ſo as to intitle himſelf to Damages againſt the Sheriff, and the King to a Fine for his Contempt. But if at the Return of the *Pluries*, the Plaintiff, and alſo the Defendant appear, they may plead, *&c.* And alſo (by *Aſhton*) if the Defendant appears, he may compel the Plaintiff to Count (*inſtanter*) although they have no Day in Court, and by the ſame Reaſon may cauſe the Plaintiff to be called upon a Nonſuit. See 22 *H.* 6. 21. *Bromfleet*'s Caſe. 2 *H.* 7. 5. But the Defendant without Doubt is not compellable to come in at the Day of the *Pluries*, but if he does, he may plead with the Plaintiff, and the Plaintiff may find Pledges in Court inſtantly. See *R. Entr.* 560. *b.* where the Plaintiff at the Day of the Return of the *Pluries* (if the Writ be executed) may have an Attachment againſt the Defendant *ad reſpond' de placito quare cepit Averia*, *&c.* R. Entr. 570. Or if the Sheriff returns *Elongata*, then the Plaintiff ſhall have a *Withernam*, wherein is alſo contained an Attachment againſt the Defendant; and by the *Withernam* Day is given to both Parties, Plow. 223. a. *The King*, &c. *We command you, that juſtly and without Delay you cauſe to be replevied* (*a*) *the Cattle of* B. *which* D. *took and unjuſtly detains, as it is ſaid, and afterwards thereupon cauſe him juſtly to be removed, that we may hear no more Clamour thereupon for want of Juſtice*, &c.

But if he take but one live Beaſt, then the Writ ſhall be,

The King, &c. *We command you, that you cauſe to be replevied to* B. *his certain Horſe, or his certain labouring Beaſt, or his Ox*, &c. (*b*).

Dyer 229. a. And if a Man take a dead Chattel, then the Writ ſhall be,

The King, &c. *We command you*, &c. *that you cauſe to be replevied to* B. *his Goods and Chattels.* And in the Count he ought to declare of divers Things: But if he take but one Thing which is a dead Chattel, then the Writ ſhall be,

The King, &c. *We command you*, &c. *that you cauſe to be replevied to* B. *a certain Net, or a certain Swarm of his Bees, or a certain Iron of his Mill.* And if the Sheriff doth nothing upon this Writ, then he ſhall have an *Alias repleg' fac'*, *&c.* and in the ſame Writ he may have this Clauſe; *Or ſignify to us the Cauſe why you would not or could not execute our Command heretofore directed to you thereupon*, &c. And then this Writ ſhall be returned into the (*c*) King's Bench or Common Pleas. And if he do not ſerve this Writ, then he ſhall have a *Pluries* returnable into the King's Bench or into the Common Pleas. And in the *Pluries* is always this Clauſe; *Vel cauſam nobis ſignifices:* But not in the *Alias repleg'*, if not that the Party will have it put in the Writ. And the Plaintiff may ſue all theſe Writs forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one Time, if he ſo ſee good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment againſt the Sheriff (*d*) directed unto the Coroners.

And

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ties, ſo that if the *Withernam* be returned *tardè*, then the Defendant at the Day may compel the Plaintiff to Count; but otherwiſe it is, if the *Withernam* be not returned ſerved, becauſe then the Parties have no Day in Court but by the Roll, and therefore the Plaintiff cannot be Nonſuit, but may Count. 22 *H.* 6. 22. by *Newton.*

A Nonſuit was in Replevy, where the Plaintiff did not find Pledges; but if the Plaintiff has found Pledges, and the Sheriff on the Attachment in the *Withernam* returns that the Defendant *Nihil*, yet it ſeems he may come in by a Day on the Roll, and the Plaintiff ſhall be called; and if he be nonſuited, a ſpecial Writ of Delivery on the *Withernam* ſhall be granted to the Defendant, and a Return of the Beaſts; notwithſtanding the Return of the Sheriff, if in Truth the Sheriff had made Deliverance of them to the Plaintiff or not, and ſo force the Plaintiff to a *ſecond Deliverance.* Dyer 189. *Quære* if the Writ of ſecond Deliverance be not taken away by a late Statute.

(*a*) And he may count of ſeveral Takings, Part at one Day and Place, and Part at another Day and Place. 29 *Ed.* 3. 23. adjudged.

(*b*) So it may be of a Horſe, *&c.* and if the Sheriff make Deliverance of a Horſe to the Defendant, he ſhall not have Treſpaſs, becauſe he might have claimed Property; but of a Stranger's Horſe not Party to the Writ, he may have Treſpaſs againſt the Sheriff. 14 *H.* 4. 24. 21 *Ed.* 4. 16 *&* 54. And *quære*, Whether Treſpaſs lies againſt the Sheriff for replevying a Stranger's Beaſt, by the Plaintiff's own Shewing or Direction. *Kelw.* 119. *per Jod.*

(*c*) See *Dyer* 189. A Return in Chancery, and note by the *Pluries* the Power of the Sheriff is determined. 11 *H.* 4. 49.

(*d*) See 44 *Aſſ.* 15. An Attachment againſt the Sheriff to have a Replevin directed to the Coroners, and the Sheriff returns the Attachment *&* *Elongata* for the Beaſts; whereupon a *Diſtringas* againſt the Sheriff, with a *Withernam*, iſſued, and he returns the *Diſtringas* with a Taking in *Withernam*; and now comes the Plaintiff, and prays a Writ of Deliverance of the Beaſts taken in *Withernam*; and the Defendant comes and prays, that the Plaintiff may gage Deliverance of them, for that Part of the Beaſts ſo taken were dead in Pound, *&c.* and

the

F And it appeareth by the Regiſter, that if the Sheriff return upon the *Replevin, Sicut alias* or *Pluries*, that he hath ſent unto the Bailiff of the Franchiſe, *&c.* who hath given him no Anſwer, or that he will not make Deliverance, *&c.* then the Plaintiff ſhall have a *Non omittas* unto the Sheriff, that he enter into the Franchiſe and make Return; and if the Sheriff doth not do ſo, he ſhall have an *Alias non omittas* directed unto the Sheriff, and afterwards a *Pluries non omitt'*, *&c.* But it ſeemeth that that Return, *That I commanded the Bailiff of the Liberty*, &c. *who gave me no Anſwer*, or the Return that the Bailiff will not make Deliverance of the Cattle, are not good Returns. For by the Statute of *Weſt.* 1. *cap.* 17. in the End of the Statute it appeareth, that the Sheriff upon ſuch a Return made to him by his Bailiff, ought preſently to enter into the Franchiſe, and to make Deliverance of the Cattle taken: And ſo it appeareth the Sheriff may do by the Statute of *Marlebridge*, *cap.* 21. If a Plea of *Withernam* be in the County by Plaint before the Sheriff, and the Sheriff ſend unto the Bailiff of the Liberty to make Deliverance, and the Bailiff doth nothing, that then the Sheriff *ex Officio* may enter into the Liberty without any Writ directed unto him in that Caſe.

G (*a*) And if the Sheriff upon the *Pluries* return, *That the aforeſaid* B. *took the Cattle of the aforeſaid* A. *and hath driven them out of the County aforeſaid into the County of* T. *wherefore he could not replevy them to the ſaid* A. *&c.* or if the Sheriff return, that he ſent to the Bailiff of the Liberty of *D.* who hath Return of Writs, *&c.* who gave him Anſwer, that the Cattle are eſloined into divers Liberties, by reaſon whereof he cannot have a View of them, nor deliver the Cattle; or if the Sheriff return, that he himſelf cannot have View of the Cattle to deliver them; or if he return, that after the Taking, *&c.* that the Defendant hath eſloined the Cattle out of his Bailiwick that he cannot deliver them; or if he return, that the Defendant hath eſloined them into unknown Places, that he cannot have View of them to deliver them; or if the Sheriff return, that he ſent unto the Bailiff of the Liberty, who anſwered him, that the Defendant had impounded the Cattle within the Rectory of the Church of *C.* for which Cauſe he cannot deliver them, *&c.* Upon theſe Returns made by the Sheriff, the Plaintiff ſhall have a Writ of *Withernam* to [69.] take as many of the Defendant's Cattle, directed unto the Sheriff; and the Writ ſhall be ſuch:

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the Reſidue he is ready to deliver; and becauſe he had not Part (ready) at the Day in Court, the Plaintiff was directed to ſue a Writ to the Coroners to deliver the firſt Beaſts, and to attach the Defendant to anſwer, and on the Return thereof the Plaintiff might plead, *&c.*

(*a*) If the Sheriff return that the Beaſts are incloſed in a Park among Savages, or incloſed in a Caſtle, *&c.* he ſhall be amerced, and another Writ of Replevin ſhall be awarded; for he ought to have taken the *Poſſe Comitat'*. 8 H. 4. 18. for it was a Denial.

On a *Pluries* to the Sheriffs of *London*, they return the Cuſtom of the City, that Replevin ought to be made in the Sheriff's Court there, and not by the King's Writ; *&* *non allocatur*, and an Attachment was granted. *Dyer* 254.

See a Replevin againſt him who diſtrained for the King for fifteen Shillings, 20 *Ed.* 3. *Avowry* 130. 19 *Ed.* 2. *Avowry* 223. and note on an exceſſive Diſtreſs the Plaintiff may recover Damage there. 11 *R.* 2. *Avowry* 87.

Withernam.

A *The King to the Sheriff*, &c. *Whereas we have oftentimes commanded you, that juſtly*, &c. *to* A. *his Cattle, which* B. *&c. detains, as it is ſaid, or ſhould ſignify to us the Cauſe why you would not or could not execute our Command more than once directed to you thereupon; and you have ſignified to us, that after the aforeſaid* B. *took the Cattle of the aforeſaid* A. *he drove the ſame through your County, and from the County aforeſaid into the County of* C. *wherefore you could not replevy them to the ſaid* A. *We being willing to oppoſe the Malice of him the ſaid* B. *in this Matter, do command you, that without Delay you take in Withernam the Cattle of the aforeſaid* B. *in your Bailiwick, and detain them until you can replevy to the ſaid* A. *his Cattle aforeſaid according to the Cuſtom of our Realm, according to the Tenor of our ſaid Commands heretofore directed to you*, &c.

B And note, that in the Writ of *Withernam* the Cauſe which the Sheriff returned upon the *Pluries, &c.* ought to be put and rehearſed in the Writ of *Withernam*, as before is ſaid. And if the Sheriff return upon the *Pluries*, that he hath ſent unto the Bailiff of the Liberty, and that he anſwers him, that the Beaſts are eſloined, *&c.* then he ſhall have a *Withernam* directed unto the Sheriff, and the Sheriff ſhall ſend his Bailiff into the Liberty to ſue the *Withernam*; and if the Bailiff do not Execution, nor give anſwer unto the Sheriff of the Precept directed unto him, then the Plaintiff ſhall have a *Withernam* directed unto the Sheriff, with *Non omittas becauſe of any Liberty*, &c. *but enter the ſame*, &c. and to take the Cattle in *Withernam*, &c.

C (*a*) And it appeareth by the Regiſter, if a Man ſue a Replevin in the County without Writ, and the Bailiff return unto the Sheriff, that he cannot have View of the Cattle to deliver them; then the Sheriff by Inqueſt of Office ought for to inquire thereof: And if it be found by the Jury, that the Cattle are eſloined, *&c.* then the Sheriff in the County Court may award a *Withernam* to take the Defendant's Cattle. And if the Sheriff will not award a *Withernam*, then the Plaintiff ſhall have a Writ out of the Chancery directed unto the Sheriff, rehearſing the whole Matter, commanding him for to award a *Withernam, &c.* And he may have an *Alias*, and after a *Pluries* and Attachment againſt the Sheriff, if he will not execute the King's Command, *&c.*

D (*b*) And a Man ſhall have a Replevin of divers Cattle that are taken; as if a Man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff ſhall have his Replevin of them all, as well as of the Cows and Sheep which were taken.

V. 16 H. 7. 14. that a Precept to the Bailiff by Word is as good as by Writing.

E And the Sheriff, upon a Complaint made unto him of taking of the Cattle, may command his Bailiff by Word for to replevy them (*c*); and the

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(*a*) See 30 *Ed.* 3. 23. By the Uſage of the City of *Northampton*, the Frankpledge of the Vill may make Deliverance in the Abſence of the Bailiff.

(*b*) Where on the Iſſue, that he did not take, and the ſpecial Matter found, it ſhall be adjudged for the Plaintiff. 18 *Ed.* 3. 43. See 12 *Ed.* 4. 5.

(*c*) He may command his Bailiff on a Plaint made to him, and this is by the Statute of *Marlebr. c.* 21. and there the Sheriff himſelf is Judge. 28 *H.* 6. *Retorn' de Vic'*. 17 *Dyer* 245. But if the Party (Defendant) claims Property, the Sheriff cannot in that Caſe make Replevin.

See a Replevin againſt Executors of Goods taken by the Teſtator, 14 *H.* 4. 29. 33 *Ed.* 3. *Avowry* 257. See a Replevin of Beaſts, *Domus & Eccleſiæ capt' tempore prædeceſſoris*, 9 H. 6. 25.

ſame is as well as if the Sheriff had made his Warrant to his Bailiff to have replevied them; for it may be that the Sheriff nor his Bailiff cannot write, or that they may want ſuch Things wherewith they may write a Warrant, *&c.*

F And the Lord ſhall have a Replevin, if his Villain's Cattle are taken; and yet he had not Property in them at the Time of the Taking, but now by his Claim he hath, *&c.* But it ſeemeth he ſhall not have Damages for the Taking of the Cattle, but only for the Detaining of them, if the ſame be found for him. 9 *H.* 6. 26. 42 *Ed.* 3. 28 *or* 8.

1 Inſt. 145. b. 33 Ed. 3. Replevin 43. 9 H. 7. 22. 14 H. 4. 4.

G (*a*) And if a Man take Cattle for Damage-feaſant, and the other tenders Amends, and he refuſeth it, *&c.* now if he ſueth a Replevin for the Cattle, he ſhall recover Damages only for the Detaining of them, and not for the Taking of them, for that the ſame was lawful, and therefore no Return ſhall be. See 22 *H.* 7. 30. *contra* in Caſe of Treſpaſs.

H And if the Lord diſtrain his Tenant's Cattle wrongfully, and afterwards the Cattle return back unto the Tenant; yet the Tenant ſhall have a Replevin againſt the Lord for thoſe Cattle, and ſhall recover Damages for the wrongful Diſtraining of them, becauſe he cannot have an Action of Treſpaſs againſt his Lord for that Diſtreſs: But againſt a Bailiff or Servant he may. 1 *H.* 6. 7.

I (*b*) And if a Man do diſtrain Cattle in one County, and drive the Cattle into another County, the Party may ſue a Replevin in which of the Counties he will, but not in both the Counties. See 19 *H.* 6. 34, *&c.*

K And if the Cattle of a Feme ſole be taken, and afterwards ſhe marry a Huſband, the Huſband alone may have a Replevin. *Quod vide Trin.* 33 *Ed.* 3. See 33 *Ed.* 3. *pl.* 43. *Bro. Bar. & Fem.* 85. *contr.*

L (*c*) And in a Replevin, if the Plaintiff do declare, that the Defendant yet hath and detaineth the Cattle, and the Defendant doth appear, and afterwards

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(*a*) See 27 *Ed.* 3. 8. *b.* 45 *Ed.* 3. 9. But if the other had them in Pound before Amends tendred, it is then too late to tender the Amends, and on the Avowry the Defendant ſhall have no Return till a new Tender, and then the Party may have Detinue. *Quære* 13 *H.* 4. 17. 14 *H.* 4. 4. And if he tenders before the Taking, the Taking is tortious, 7 *Ed* 3 8. and if immediately on the Taking, the Detainer is ſo, and he may recover Damages for it, and no Return ſhall be awarded to the Lord. 45 *Ed* 3. 9.

If the Tenant tenders his Fealty, and yet the Lord diſtrains and avows for it, the Tenant cannot plead the Tender, without ſaying he is ſtill ready to perform it, and he ought to make the Fealty in Court. See 3 *Ed* 2. *Avowry* 187. If the Tenant tenders his Homage, and the Lord refuſe, he cannot afterwards diſtrain for it, without a new Demand and Refuſal. 20 *Ed.* 3. *Avowry* 123.

(*b*) See where Replevin does not lie in this Caſe, but he is put to his Writ on the Statute, and therefore the Writ to the Sheriff of the County where the Beaſts were taken was abated. *Temp. Ed.* 1. *Avowry* 194. *Dyer* 169. *Poſt.* 84. P See 19 *H.* 6. 34. 21 *H.* 6 —— 11 *H.* 4. 10. 42 *Ed.* 3 —

(*c*) So if the Defendant claims Property, or ſays that he did not take, *&c* If in the mean Time the Beaſts die, or are ſold, ſo that he cannot have a Return, he may recover all in Damages, if it be found for him. 7 *H.* 4. 18. the Defendant claimed Property in *C. B.* and they are at Iſſue, and it was found for the Plaintiff, it ſeems he ſhall recover the Value of the Thing taken, and his Damages. 11 *H* 4 10. If the Defendant makes Conuſance and avows, and after Day given over makes Default, the Plaintiff ſhall recover his Damages by Taxation of the Court. 14 *H.* 4. 2.

maketh Default; the Plaintiff ſhall have Judgment to recover all in Damages, as well the Value of the Cattle, as Damages for the Taking of them, and his Coſts. *M.* 8 *H.* 8. *Rot.* 108. See *Lutw.* 1150.

See the Record hereof Co. Entr.610,611.

Writ de Pone de remover le Plea.

NOTE, That if a Replevin be ſued by Writ out of the Chancery, then M
if the Plaintiff or Defendant will remove that Plaint out of the County into the Common Pleas or King's Bench, he ought to ſue a Writ out of the Chancery, which is called a *Pone*; and the Writ ſhall be ſuch:

The King to the Sheriff of Lincoln. *At the Petition of the Plaintiff put before our Juſtices at* Weſtminſter *ſuch a Day, the Plea which is in your County by our Writ between* A. *and* B. *of the Cattle of him the ſaid* A. *taken and unjuſtly detained, as it is ſaid, and ſummon by good Summoners the aforeſaid* B. *that he be then there to anſwer the aforeſaid* A. *thereupon: And have you there the Summoners, and this Writ.*

And if the Writ of *Pone* ſhall be removed into the King's Bench, then the Writ is ſuch:

The King, &c. *At the Petition of the Plaintiff put before us, whereſoever we ſhall then be in* England, *the Plea*, &c.

(*a*) And this Writ is ſued for the Plaintiff without putting any Cauſe in the Writ of the Removement, *&c.*

[70.] But if the Defendant will remove the Plea in the County upon a Replevin A
ſued by Writ, then he ought to put an evident Cauſe in (*b*) the Writ after the *Teſte* of the Writ; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Put before our Juſtices at* Weſtminſter *ſuch a Day, the Plea which is in your County by our Writ between* A. *and* B. *of the Cattle of him the ſaid* A. *taken and unjuſtly detained, as it is ſaid, and tell the aforeſaid* A. *that he may be there if he will, to proſecute his Plea thereupon againſt the aforeſaid* B. *And have you there this Writ and the other Writ: Witneſs*, &c.

(*a*) *Pone* (at the Defendant's Suit) *loquelam quæ eſt in Com' tuo' int'* A. *&* B. *de Averiis ipſius* A. *capt'*, *&c.* and ſays *præfato* B. where it ſhould be *præfat'*. A. *Rolph* came for *A.* the Plaintiff in the Replevin, and prayed Damages, becauſe otherwiſe he had no Remedy; for the *Pone* is abateable, and ſo held the Court, being without Warrant; and yet it ſhall not be remanded becauſe both are the King's Courts, and a new *Pone* does not lie in this Caſe, becauſe the Plaint ſhall ſtand. *Martyn*, *Baker* and *Paſton* contra, That a *Pone* or *Recordare* is only to remove the Plaint, ſo that when the Plaint is removed, the *Pone* or *Recordare* is determined, and the Court ſhall hold Plea on the Plaint, and not on the Writ of *Recordare*, ſo that the Pledges firſt found ſtill remain, and the *Pone* or *Recordari* ſhall never abate: And for that the Court in this Caſe is ſeiſed of the Plaint, but the Plaintiff has no Day; the Court ſhall make a ſpecial Writ to the Sheriff, to warn the Plaintiff to purſue his Plaint. *Et ſic factum fuit*, 3 *H.* 6. 2. A Plaint is well removed, although the *Pone* bears Date before the Plaint entered. 1 *R.* 3. 4. So if the Plaint be removed by *Certiorari*, where it ought to be by *Pone* or *Recordari*. See 7 *Ed.* 4. 23. So if one Plaint is removed where another ought to have been, *ibid.* or where there is a Variance between the Plaint and the Writ. 6 *Ed.* 3. 55. 8 *Ed.* 3. 71. See 13 *Ed.* 1. *Admeaſurement* 17.

(*b*) But the Cauſe may be traverſable, for that both are the King's Courts. *Vide* the Note *ſupra* *&* *Poſt.* 119. G.

And becauſe the aforeſaid B. *took the Cattle aforeſaid within his Fee for Cuſtoms and Services due to him, as it is ſaid, if the Cauſe be true, and the aforeſaid* B. *requires it, let Execution of this Writ be done, and otherwiſe not.* And he (*a*) may ſhew divers other Cauſes: *Becauſe the aforeſaid* B. *and* C. *took the Cattle aforeſaid in the Fee of him the ſaid* B. *for Cuſtoms,* &c. *let Execution be done,* &c. as above. Or thus: *Becauſe* A. *the Clerk of* D. *Sheriff of the County aforeſaid, who frequently in the Abſence of the Sheriff of the County holds the Pleas of the ſame County, is the Kinſman of the aforeſaid* A. *for which the ſame Sheriff favours him the ſaid* A. *in the Plea aforeſaid, as it is ſaid, let Execution be done,* &c. as above.

And he may ſhew any Cauſe which induceth any Favour that the Sheriff Poſt. 119.
doth or is like to do unto the Plaintiff. Or thus: *Becauſe the aforeſaid* B. *claims the aforeſaid* A. *to be his Villain, and for that Reaſon aſſerts the Cattle aforeſaid to be his own, for which that Plea ought not to be brought in the County, as it ſaid, let Execution be done,* &c. as above.

And if a Replevin be ſued by Writ in any other Lord's Court than in the King's Court, then the Plaint cannot be removed before the Juſtices by the Plaintiff, nor by the Defendant, without putting Cauſe in the Writ; and the Writ is, *At the Petition of the Plaintiff put the Plea which is in your County by our Writ between* R. *and the Abbot of* W. *and* I. *of a certain Horſe of him the ſaid* R. *taken and unjuſtly detained, as it is ſaid; and ſummon by good Summoners the aforeſaid Abbot and* I. *that they be then there to anſwer the aforeſaid* R. *thereupon: And have you there this Writ and the other Writ: Witneſs,* &c. *Becauſe the aforeſaid Abbot is Lord of the Court in* C. *wherein that Plea dependeth by Return of our Writ, by which the ſame* R. *cannot obtain Juſtice in the Plea aforeſaid in the ſame Court againſt the aforeſaid Abbot and* I. *as it is ſaid.*

And if the Plea be removed at the Suit of the Plaintiff, then when he hath ſhewed Cauſe in the End of the Writ, he ſhall ſay afterwards in the ſame Writ, *For which the ſame Complainant cannot obtain Juſtice in his Plea aforeſaid againſt the aforeſaid* B. *in the ſame Court, as it is ſaid.*

And if the Plea be removed at the Suit of the Defendant, then after Cauſe ſhewed in the Writ it ſhall be ſaid, *For which the ſame Bailiff favours him the ſaid* A. *in his Plea aforeſaid, as it is ſaid. Let Execution be done,* &c. as above (*b*).

(*a*) Per *Rolph*, the Sheriff cannot return that the Cauſe is not true, 7 *H.* 6. 32. and notwithſtanding the ſaid Cauſes, the Defendant may avow for Damage-feaſant. 10 *Ed.* 2. *Avowry* 213, 515. 20 *Ed.* 3. *Avowry* 130.

(*b*) See 21 *H.* 6. 50. If the Plaint be removed by the Defendant by *Pone*, at the Day in Bank the Plaintiff ſhall be called on a Nonſuit; and if he make Default, a Return ſhall be awarded and no Proceſs; but if the Plaintiff appears, and the Defendant makes Default, a *Diſtringas* ſhall iſſue, and after that Proceſs of Outlawry. But if the Plaint be removed by *Pone* or *Recordare* by the Plaintiff, there if he makes Default, it is a Nonſuit if the Defendant *Pon' per Vad'*, and thereon iſſues a *Diſtringas*, &c. and ſo Proceſs of Outlawry.

Writ de Recordare.

6 H. 4. r. 6 Ed. 6. Plow. 74. It appeareth by the Regiſter 6 & 7. Br. Cauſe de remover Plea 36. that by Recordare Pleas ſhall be removed *extra Durham & Ceſtriam*: Yet theſe are Courts of Record.

WHEN the Plaint is in the County, and the Replevin ſued there without Writ; then if the Plaintiff or Defendant will remove that Plaint, he ought to ſue a Writ of *Recordare* out of the Chancery directed unto the Sheriff; and the Writ ſhall be ſuch:

(*a*) *The King to the Sheriff of* Lincolnſhire, *greeting: We command you, that in your full County you cauſe to be recorded the Plaint which is in the ſame County without our Writ, between* A. *and* B. *of the Cattle of him the ſaid* A. *taken and unjuſtly detained, as it is ſaid, and have that Record before our Juſtices at* Weſtminſter *ſuch a Day*, &c. *under your Seal and under the Seals of four lawful Knights of the ſame County of them who were preſent at that Record, and prefix the ſame Day to the Parties, that they be then there to proceed in that Plea as it ſhall be juſt: And have you there the Names of the aforeſaid four Knights and this Writ: Witneſs*, &c. *Let Execution of this Writ be done, if the aforeſaid* A. *requires it, and otherwiſe not.*

27 H. 6. 3. *Quære* Plow. 74. Bro. Court Baron 22.

And thereby it appeareth that the Plaintiff may remove the (*b*) Plaint by *Recordare*, without any Cauſe put in the Writ; but the Defendant cannot remove the Plaint by a *Recordare* without ſhewing Cauſe in the Writ, as before is ſaid upon the *Pone*. And the Cauſes for the Defendant ought to be ſuch; *Becauſe the aforeſaid* B. *in pleading affirms, that he himſelf took the Cattle aforeſaid in his ſeparate Soil, as in his Damage there, in which Soil indeed the aforeſaid* A. *claims to have Common of Paſture, as it is ſaid, which ſaid Plaint, for that it toucheth the Freehold (as is afore ſaid) in the ſame County, ought not, according to the Law and Cuſtom of our Kingdom, to be pleaded without our Writ: Let Execution of this Writ be done, if the Cauſe be true, and the aforeſaid* A. *requires this.*

(*a*) See 20 *Ed.* 3. 31. Where Beaſts were taken in *D.* in the County of *Berks*, which was within the Precinct of the Honour of *Wallingford*, where the Plaintiff had Deliverance without Writ; and the Defendant ſued a *Recordare* to the Sheriff of *Berks quod diſtrinxerit in Feodo*, &c. and at the Day the Plaintiff came, but the Defendant made Default. And it was adjudged, (1.) That the Plaint was well removed, altho' the Taking was in another County. (2) That Proceſs of Outlawry does not lie in this Caſe on the Defendant's Default, as it is does in Replevin. (3.) That yet, if he comes in by Proceſs of Outlawry, he ſhall be forced to Anſwer. (4) That he may avow for Damage-feaſant, notwithſtanding the ſpecial Cauſe aſſigned. *Note*; The Beaſts here were driven into the County of *Berks*. Dyer 168.

Note; The Words (*ut dicitur*) are to be in the Writ when brought by a common Perſon only, and not when brought by the King. 38 *Ed.* 3. 31.

(*b*) If the Cauſe be removed by Plea out of the Lord's Court (it ſeems of Ancient Demeſne) the *Cauſe* is traverſable; *contra*, if it be out of the King's Court. 12 *H.* 4. 12. and 31 *Ed.* 3. *Fitz. Cauſe de remover* 10. and though there be no Cauſe, yet the Parol ſhall not be remanded; *contra*, if in Ancient Demeſne. 12 *H.* 4. 14. For on a *Recordare* out of Ancient Demeſne, the Plea ariſes wholly on the Cauſe, and therefore the Plaintiff may be Nonſuit in ſuch *Recordare*; but if it be out of any other Court, the Plea ariſes upon the mere Matter, and therefore the Plaintiff cannot be nonſuited there. *Kelw.* 115.

And if a Replevy be ſued by Plaint in the Court of any other Lord, than in the County Court before the Sheriff, then the *Recordare* which is ſued by the Plaintiff or Defendant ſhall be directed unto the Sheriff; and the Writ ſhall be ſuch:

The King to the Sheriff of Lincolnſhire, *greeting: We command you, that having taken with you four diſcreet and lawful Knights of your County, you go in your own Perſon to the Court of* W. *of* C. *and in that full Court you cauſe to be recorded the Plaint which is in the ſame Court without our Writ between*, &c. *and have that Record under your Seal and the Seals* (*a*) *of four lawful Men of the ſame Court who were preſent at that Record*, &c. *and to the Parties*, &c. as above. *Becauſe the aforeſaid* A. *is the Bailiff of the aforeſaid* W. *of* C. *of his Court aforeſaid, and holds the Pleas of the ſame Court, and ought not to be a Judge in his own Cauſe.*

10 Ed. 3 42.

Another *Recordare* thus: *You go to our Wapentake of* H. or thus, *To our Hundred of* I. or thus, *To our Tithing of* L. *and in that full Wapentake*; or thus, *in that full Hundred*; or thus, *in that full Tithing*, &c. and he may ſhew other Cauſes, as the Caſe requireth. And if the *Recordare* be returnable in the Common Pleas, and at the Day of the Return the Sheriff return it * *tarde*; now the Party that ſued that *Recordare* ſhall have a *Sicut alias recordare* out of the Common Pleas directed unto the Sheriff, *&c.* 10 *Ed.* 3. 42.

[*71.]

9 H. 6. 58.

If a Recordare iſſue to a Court of Record to remove a Plea, although by that the Record be removed, it is void, if it be not to remove Indictments.

A (*b*) And if the Plea be diſcontinued in the County, yet the Plaintiff or Defendant may remove the Plaint into the Common Pleas or King's Bench by *Recordare*, *&c.* and it ſhall be good, and he ſhall declare upon the ſame; and the Court ſhall hold Plea upon the ſame Plaint; for if the Plaint be (*c*) continued in the County, and Iſſue joined upon it, yet nothing ſhall be removed but only the Plaint; and in the Common Pleas the Plaintiff may declare anew, *&c.*

3 H. 6. 30.

Br. Cauſe de remover Plea 37. 2 H. 8. 5.

B And in a *Recordare* to remove a Record out of Ancient Demeſne the Writ ſhall ſay, *Plaint and Proceſs*, and not *Record*; *quod vide* 39 *H.* 6. by all the Juſtices; yet the Form of the Regiſter in the Record, as before is ſaid, is, *And have that Record.*

But if Conuſans be demanded, all the Record in Bank ſhall be in the Franchiſe. 9 H. 6. 58. Oyer and Terminer ſhall not be removed by Recordare, by Babington. 1 R. 3. 4. acc. Vide 5 Ed. 6. fo. 91. 34 H. 6. 27. Aſhton cont', upon a Fine removed; and 22 H. 6. 7.

(*a*) And *Note*; A Record not being received at the *Diſtringas Sectatores* by Attorney, was afterwards received by the Suitors on a Writ out of Chancery. 29 *Ed.* 3. 36.

(*b*) See accordant 3 *H.* 6. 30. and the like in a *Pone.* 13 *Ed.* 3. *Replevin* 37. 14 *Ed.* 3. F. *Brief* 278.

(*c*) And therefore if the Defendant be named without any Addition in the Plaint, he ſhall have no Addition in the *Recordare*, though Proceſs of Outlawry lies thereon. 2 *H.* 5. 6. (30 *H.* 6. 30. accordant) adjudged. For the Plea here is not held on a Writ (but a Plaint only) and ſo not within the Intent of the Statute.

Note; A *Capias* lies on a Default in a *Pone* for the Plaintiff in a Replevin by Plaint, but not on a Default upon a *Juſticies.* 3 *H.* 6. 54. See 14 *H.* 6. 21. Yet if a *Withernam* be awarded in a County, the Plaintiff ſhall gage Deliverance here. And a *Recordare* makes the Court Judge of the whole Matter. 21 *H.* 6. 40. See 39 *H.* 6. *Recordare* 5. 20 *Ed.* 3. *Recordare* 10, 20.

If a Record be removed out of a Court of Record by a *Recordare facias*, C
it cometh in without Warranty, and the (*) Court ſhall not hold Plea thereof. But if a Record cometh in Court without a Warrant, the Party may ſue a Writ directed unto the Juſtices, that they proceed upon that Record *quod coram vobis reſidet*. If the *Recordare facias* bear Date before the Plaint were en- D
tred in the County, yet the Record is well removed, becauſe that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by ſuch Writ which beareth Date before the Entry of the Plaint, it is not good.

Recaption.

A Writ of (*a*) Recaption lieth where a Man diſtraineth for Rent or Service, E
or other Things, and afterwards, pendent the Plea, he who diſtrained doth diſtrain again for the ſame Rent or Service, or other Thing, the Beaſts of the Party whom he had before diſtrained upon; then he who is ſo diſtrained ſhall have this Writ, and ſhall recover Damages for the ſecond Diſtreſs taken; and he who took the Diſtreſs ſhall be fined for the Wrong, although the firſt Diſtreſs were lawfully taken, and although that the Rent or Services for which he diſtraineth were Arrear, *&c.* becauſe by the firſt Diſtreſs he ſhall have Return of the Things taken, until he hath the Rent or Services for which he
47 Ed. 3. 7. Finchd. cont. diſtrained. But for Damage-feaſant in his Lands, a Man may diſtrain the Beaſts of any Man which he finds upon the Land during the Damage, ſo often as he ſhall find them ſo doing, becauſe he diſtraineth them every Time for a new Treſpaſs and new Wrong done in his Land. *Tamen quære.*

And if the Lord diſtrain for Rent or Services behind, and afterwards, pen- F
dent the Plea, the Lord doth command his Servant to diſtrain for the ſame Rent or Service, by reaſon whereof the Servant or Bailiff do diſtrain again; the Tenant ſhall have a Writ of Recaption againſt the Lord for the ſame Diſtreſs.

And ſo it ſeemeth, if the Lord diſtrain his Tenant for Rent or Service, and afterwards the Servant or Bailiff do diſtrain the Tenant again for the ſame

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(*) See 9 *H.* 6. 58, 59, accordant (*ſed* 34 *H.* 6. 42, *contra*) where by a *Recordare* the Record was removed by the Sheriff out of the Chancellor of *Canterbury*'s Court; but it is there ſaid, that the Court of *Cant*' might have refuſed to obey the Writ, for being a Court of Record by Commiſſion, the Plea ought not to be removed by a *Recordare*, but by a *Corpus cum cauſa*, or a *Certiorari*. And it was held, that ſeeing the Plea was held in this Court without Warrant, the whole Proceedings were void, and therefore the Court could not remand it; for the Record was never brought in here, but always remained at *Cant*', and ſo all was diſcontinued. Yet ſee the *Regiſter, page* 6, 7. A *Recordare* on a foreign Voucher out of *Cheſter*. A *Recordare* was to remove a Plaint *in Curia noſtra*, where it was *in Cur' Reginæ Mar'*; and ruled that the Plaint was not removed. *Trin.* 3 *Eliz. Mo.* 78, 130. See alſo *Nat. Br.* 12. 12 *H.* 4. 13. 7 *Ed.* 4. 23. 1 *R.* 3. 4.

(*a*) *Note* 11 *H.* 6. 14. If the Plaintiff in a Recaption be Nonſuit, the Defendant ſhall have a Return (of the Beaſts, *&c*) and therefore in this Caſe the Plaintiff's own Counſel alledged Death of the Plaintiff, after the laſt Continuance, in order to abate the Writ, and ſo to prevent a Nonſuit. 11 *H.* 6. 14.

Rent or Service, and the Lord do agree unto that Diſtreſs, by joining in Aid Prayer of the Servant or Bailiff, the Tenant ſhall have a Writ of Recaption againſt the Lord. But if the Lord diſtrain for Rent or Service, and afterwards the Lord's Bailiff doth diſtrain the ſame Tenant for the ſame Rent or Service, pending the Plea; the Tenant ſhall not have a Recaption againſt the Lord, nor againſt the Bailiff, although the Bailiff maketh Conuſance in the Right of the Lord, *&c.* For it may be that the Lord had not Notice of that Diſtreſs, or that the Bailiff had not Notice of that Diſtreſs which the Lord took before for the ſame Rent or Service.

G But it ſeemeth in that Caſe the Tenant may have an Action of Treſpaſs againſt the Bailiff for the ſecond Diſtreſs of his Cattle for the ſame Rent or Service for which the Lord had diſtrained before. 10 *Ed.* 3. *pl.* 13.

H But if the Lord do diſtrain for Rent or Services, and afterwards (pendent the Plea) the Lord do diſtrain the Cattle of a Stranger for the ſame Rent, and not his Cattle who was firſt diſtrained; he who is ſo diſtrained ſhall not have a Writ of Recaption, nor he who was firſt diſtrained. For it behoveth him who ſhall have this Writ of Recaption, that he have his Cattle firſt diſtrained before for the ſame Cauſe for which they were diſtrained the ſecond Time. 12 *Ed.* 2. *p.* 13.

I But if a Man diſtrain two Mens Cattle for Rent or Service, and afterwards he doth diſtrain the Cattle of one of them again for the ſame Rent or Service; now he ſhall have a Recaption alone in his own Name. 34 *Ed.* 2. *p.* 12.

K And if the Lord diſtrain the Beaſts of a Stranger for Rent or Service, and Poſt. G. afterwards (pendent the Plea) the Lord doth diſtrain the Beaſts of the ſame Stranger for the ſame Rent or Service; the Stranger ſhall have a Recaption as well as the Tenant, if the Beaſts were taken at two ſeveral Times.

L And if the Writ of Replevin be abated, then the Writ of Recaption ſhall abate, as it was judged in the Time of King *Ed.* 1.

M And if the Lord do diſtrain for Rent Arrear at a certain Day his Tenant's Cattle, and he ſueth a Replevin, *&c.* and the Lord avow for the Rent, *&c.* and the Tenant plead (*a*) *Hors de ſon Fee*; if the Lord (pendent that Plea) diſtrain for Rent behind at another Day after, the Tenant ſhall have a Writ of Recaption, becauſe the Lord's Title ſhall be tried by the firſt Plea. But otherwiſe it is, if the Tenant in the firſt Replevy plead *Riens arriere*, or Levied by Diſtreſs, then (pendent that Plea) the Lord may diſtrain for the Rent behind at a Day after, becauſe that the Seigniory is there confeſſed, and the Tenant ſhall not have a Recaption (*b*). [72.]

(*a*) In this Caſe he ſhall not have Advantage of the Iſſue *Hors de ſon Fee*, before that the Iſſue be tried; and therefore he avers, that the firſt Taking was (wholly) for the ſame Rent. 28 *Ed.* 3. 29. *per Cur'*; yet ſee this Point agreed with a Diverſity, *per Cur'*, 7 *H.* 4. 4. and 9 *H.* 5. 1. *per Hankf.* See alſo 7 *H.* 4. 4. 18 *Ed.* 2. *p.* 8.

(*b*) The Defendant in Replevin, before the Sheriff, avows for Rent, the Plaint is removed by *Pone*, and the Defendant diſtrains for the ſame Cauſe, and a Recaption was brought, tho' only a Plaint of Record; and it is there agreed, that a Recaption lies before Avowry made. 9 *H.* 6. 1. 11 *H.* 6. 8. adjudged. (*Quære* 45 *Ed.* 3. 4.)

47 Ed. 3 7. And the Tenant or he who is diſtrained, ſhall have a Recaption before any A
Avowry made, and may aver he diſtrained for the ſame Cauſe (*a*).

47 Ed. 3. 7. And in a Recaption the Defendant ſhall not avow, as he ſhall do in a Replevin, B
9 H. 6. 4. but ſhall juſtify the Taking, *&c.* as he ſhall do in an Action of
Treſpaſs, for the Plaintiff ſhall recover Damages only in the Recaption for
the (*b*) Contempt that the Defendant hath done againſt the Law, and not for
the Taking of the Cattle, nor for the Detaining of them. And in a Recaption C
it is not material whether the firſt Diſtreſs be of Right or not.

And if a Plaint be removed out of the County into the Common Pleas by D
Pone or *Recordare*, and afterwards the Plaintiff be Nonſuit in the Common
31 Ed. 3. 5. Pleas, before or after an Avowry made, the Lord after this Nonſuit may
diſtrain again for the ſame Cauſe, and the Tenant ſhall not have a Recaption,
becauſe there is not any Plea depending; and yet the Plaintiff may ſue a
Writ of (*c*) ſecond Deliverance upon the ſame Record.

And if the Lord diſtrain the Cattle of the Tenant and a Stranger, which E
they have in Common, for Rent or Service, and afterwards (pendent the
Plea) the Lord doth diſtrain the Tenant's Cattle only for the ſame Cauſe;
the Tenant ſhall have a Recaption for thoſe Cattle. But if the Lord diſtrain
the Cattle of the Tenant only for Rent, *&c.* and afterwards (pendent the
Plea) the Lord doth diſtrain the Cattle of the Tenant and a Stranger, which
they hold in Common, for the ſame Cauſe; it ſeemeth that the Tenant ſhall
not have Recaption for thoſe Cattle for the Intereſt of the Stranger. *Quære.*

14 Ed. 3. And if the Lord diſtrain and the Tenant ſue a Replevin, which is removed F
Recap. pl. 7. into the Common Pleas, and the Conuſance is demanded by the Bailiff of the
Freehold, and is granted, and afterwards the Bailiff fail to do Right unto the
Party; if he diſtrain again for the ſame Cauſe, the Tenant ſhall have a Recaption,
becauſe the Lord ought to remove the Plea into the Common Pleas
again by Reſummons, *&c.*

Ant. K. And a Recaption lieth where the Lord diſtraineth other Cattle of the G
Tenant than he firſt diſtrained, as well as if he had diſtrained the ſame
Cattle again, if it be for one and the ſame Cauſe, as I conceive. And yet
in 19 *Ed.* 3. the Iſſue was taken upon the Property of the Cattle, as that they
were other Cattle of the Plaintiff, *&c.*

And a Recaption lieth as well where the Lord diſtraineth the Tenant again
for the ſame Cauſe, where the Plea is depending in the County before the
Sheriff, as where the Plea is depending before Juſtices of Record.

And if the Plea be depending in the County before the Sheriff, then the H
Form of the Writ of Recaption is,

(*a*) And ſee 28 *Ed.* 3. 92. That where the Lord in a Replevin avows for one Cauſe, and juſtifies the Recaption for another Cauſe, the Plaintiff may aver that the firſt Caption was made by him for the ſame Cauſe (as the ſecond.) See 45 *Ed.* 3. 4. 32 *Ed.* 3. *p.* 5. 9 *H.* 6. 7.

(*b*) *Note* the Defence; *viz. Defendit vim & injuriam quando, &c. & quicquid eſt in Contempt' Domini Regis & ejus Mandatum.* 29 Ed. 3. 28.

(*c*) *Note*; Second Deliverance does not lie in a Franchiſe which has Conuſance. 38 *Ed.* 3. 31.

The King to the Sheriff, &c. A. *hath ſhewed to us, that whereas you had replevied to the ſame* A. *without our Writ his Cattle which* B. *took and unjuſtly detained, and had given Day until at your next County, and had attached the aforeſaid* B. *to anſwer hereupon to the aforeſaid* A. *he the ſaid* B. *after that Attachment, again took the Cattle of the aforeſaid* A. *upon the ſame Occaſion that he before took them, and detains them as before. And becauſe this is unjuſt, and manifeſtly* (a) *againſt our Peace, we command you, that without Delay you cauſe the Cattle of the aforeſaid* A. *to be delivered, until the chief Plea between them be determined. And if you ſhall find that the aforeſaid* B. *again took the Cattle of the aforeſaid* A. *upon the ſame Occaſion that he before took them, and detains them as before, then have the Body of the aforeſaid* B. *before you and the Keepers of the Pleas of our Crown at your next County. And if by your Bailiffs by whom the Cattle of the aforeſaid* A. *were replevied, and by other honeſt and lawful Men of your County, he can be convicted of a ſecond Taking for one and the ſame Occaſion, then ſo chaſtiſe him the ſaid* B. *by Amercement, that that Chaſtiſement may make others afraid of offending in the like Caſe.*

And if the Plaint be in the County by Writ of Replevin pending before the Sheriff, then the Writ is ſuch:

The King to the Sheriff of S. *greeting:* A. *hath ſhewed unto us, that whereas he lately brought to you our Writ of replevying to him his Cattle which* B. *took and unjuſtly detains, and you have replevied thoſe Cattle to him the ſaid* A. *and given to him Day until at your next County*, &c. as in the Writ before. And if the Plaint be removed out of the County by *Recordare*, then the Form of the Writ of Recaption ſhall be ſuch:

The King to the Sheriff, &c. A. *hath ſhewed unto us, that whereas* B. *had taken and unjuſtly detained the Cattle of the aforeſaid* A. *and you upon the Complaint of him the ſaid* A. *as the Cuſtom is, had replevied thoſe Cattle to the ſame* A. *and given to him Day until at your next County, and had attached the aforeſaid* B. *to anſwer upon this to the aforeſaid* A. *and afterwards we commanded you, that you ſhould have the Record of the Plaint aforeſaid before our Juſtices at* Weſtminſter *ſuch a Day laſt paſt; the ſame* B. *pending the Plea before the ſaid Juſtices, hath again taken the Cattle aforeſaid*, &c. as above.

29 Ed. 3. 28.

And if the Plaint be removed out of the County by a *Pone* into the Common Pleas, then the Writ of Recaption is ſuch:

The King to the Sheriff, &c. A. *hath ſhewed unto us, that whereas he had lately brought to you our Writ of replevying to him his Cattle which* B. *took and unjuſtly detains, and you had replevied thoſe Cattle to the ſame* A. *and given him Day until at your next County, and you had attached the aforeſaid* B. *to anſwer upon this to the aforeſaid* A. *and afterwards we commanded that Plaint to be put before our Juſtices at* Weſtminſter *ſuch a Day laſt paſt; the ſame* B. *pending the Plea before the ſame Juſtices, again took the Cattle of the aforeſaid* A. *upon the ſame Occaſion which he before took them, and detains them as before, and doth not permit Juſtice to be done, in Contempt of our Commands. And becauſe this is unjuſt and manifeſtly againſt our Peace, we command you, that if the aforeſaid* A. *ſhall*

(a) And *Note*; The Writ ſhall be *contra Pacem noſtram*, although againſt the Lord, but not *Vi & Armis*. See 9 *H.* 6. 1. 31 *Ed.* 3. *Recapt.* 5.

[73.] *make you ſecure touching the proſecuting his Claim,* &c. *then put by Gages,* &c. *the aforeſaid* B. *that he be before our Juſtices aforeſaid to anſwer to us concerning the Contempt aforeſaid, and to the aforeſaid* A. *of the Treſpaſs aforeſaid: And have you there the Names of the Pledges and this Writ, and cauſe thoſe Cattle to be replevied to the ſame* A. *Witneſs,* &c.

A If a Man ſue a Replevin by Writ, and the Sheriff ſend unto the Bailiff of the Liberty to replevy the Cattle, becauſe that the Taking was within the Liberty, and afterwards the Plaint is removed by *Pone* into the Common Pleas, and afterwards the Lord, or the Party who diſtrained before, diſtrain again for the ſame Cauſe; then he who is ſo diſtrained ſhall have a Writ of Recaption, and the Writ ſhall be ſuch:

The King to the Sheriff, &c. S. *hath ſhewed unto us, that whereas he lately brought to you our Writ of replevying to him his certain Horſe which* J. *and* A. *have taken and unjuſtly detained, and the Bailiffs of the Liberty of the Abbot of* R. *of* C. *(whom you have made to have the Return of our Writ aforeſaid) replevied that Horſe to the ſame* S. *and attached the aforeſaid* A. *and* J. *to anſwer hereupon to the aforeſaid* S. *and afterwards we commanded that Plaint to be put before our Juſtices at* Weſtminſter *ſuch a Day in the third Year of our Reign; the aforeſaid* J. *and* A. *have again taken the Cattle of the aforeſaid* S. *pending the Plea aforeſaid before the Bailiffs of the aforeſaid Abbot of his Court aforeſaid, before whom that Plaint, according to the Liberties granted to the ſame Abbot by the ſame Juſtices, is returned to be pleaded,* &c. as above.

B And if a Lord hath a Hundred or a Wapentake, and hath Power to hold Plea *of unlawful Diſtreſs,* &c. and a Man diſtraineth another there, for which he ſueth a Replevin within the Hundred, and pendent the Plea there, the Party who diſtrained before diſtrained the ſame Man again for the ſame Cauſe; then he who is ſo diſtrained ſhall have a Writ of Recaption in ſuch Form, directed unto the Sheriff.

The King to the Sheriff, &c. A. *hath ſhewed unto us, that whereas* B. *had taken and unjuſtly detained the Cattle of the aforeſaid* A. *and the Bailiffs of* M. *of* N. *upon the Complaint of the ſaid* A. *(as the Cuſtom is) had replevied thoſe Cattle to the ſame* A. *and given to him Day until at the next Wapentake of their aforeſaid Lord of* N. *and had attached the aforeſaid* B. *to anſwer to the aforeſaid* A. *upon this, and afterwards we commanded you, that having taken with you,* &c. *you ſhould go to the aforeſaid Wapentake, and in full Wapentake,* &c. *without our Writ between him the ſaid* A. *and the aforeſaid* B. *of the aforeſaid Cattle of him the ſaid* A. *taken,* &c. *and that Record,* &c. *the ſame* B. *pending the Plea,* &c. *on the ſame Occaſion on which they were firſt taken,* &c. *put,* &c. as before in the Writ of Recaption.

C And now it appeareth by theſe Writs of Recaption, that if a Man be diſtrained, and he ſue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint he is diſtrained again for the ſame Cauſe, that he ſhall have a Writ of Recaption, which ſhall be directed to the Sheriff, and the Sheriff ſhall hold Plea upon that Writ of Recaption.

But if a Man be diſtrained within any Liberty, and he ſue a Replevin there by Plaint, or by Writ, and pendent that Plaint in the Liberty he be diſtrained again for the ſame Cauſe by the Perſon who diſtrained before; he ſhall not have upon that Diſtreſs a Writ of Recaption, becauſe the Plaint is not pendent before the Sheriff, nor before the Juſtices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the Plaint were removed by *Pone* or *Recordare* out of the Liberty before the Juſtices, then the Party who was diſtrained ſhall have Recaption, as well for the Diſtreſs which was before the Writ of *Pone* or *Recordare*, as if the Re-taking had been after the *Pone* or *Recordare* ſued forth.

D And if a Man be convicted before the Sheriff in a Writ of Recaption, *&c.* he ſhall be amerced, and render Damages unto the Party for the Contempt. But if he be convicted before the Juſtices in a Writ of Recaption, he ſhall be fined, and not amerced, and alſo ſhall render Damages unto the Party for the Contempt. 39 Ed. 3. 36.

Writ de Withernam.

E THIS Writ lieth where a Man taketh the (*a*) Cattle or Goods of another Man, and the Party ſueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, *&c.* are eſloined, *&c.* by reaſon whereof he could not replevy them, *&c.* then this Writ of Withernam ſhall iſſue (*b*) out of that Court where the *Pluries* is returned, returnable in the King's Bench (*b*) or Common Pleas: And the Form of the Writ is ſuch: See 2 Salk. 581, &c. 2 Shower 221 to 230. Fareſl. 9, 17. Raym. Ant. 68.

F *The King to the Sheriff of* Lincolnſhire, *greeting: Whereas we have many Times commanded you that juſtly*, &c. *to* A. *his Cattle which* B. *&c. or ſignify the Cauſe*, &c. *wherefore you would not or could not execute our Command many Times directed to you thereupon; and you have ſignified to us, that after the aforeſaid* B. *took the Cattle of the aforeſaid* A. *he drove them in your County, and from the County aforeſaid into the County of* B. *wherefore you could not replevy them to the ſame* A. *We being willing to oppoſe the Malice of him the ſaid* B. *in this Behalf, command you, that you take the Cattle of the aforeſaid* B. *in your Bailiwick in Withernam, and detain them* (*c*) *until you can replevy to the ſame* A. *his Cattle aforeſaid according to the Law and Cuſtom of our Kingdom, according to the Tenor of our Commands aforeſaid before to you*, &c.

G And in the Writ of *Withernam* he ought to rehearſe the Cauſe which the Sheriff returneth for which he cannot replevy them; as to ſay,

And after the aforeſaid B. *took thoſe Cattle or Beaſts, he eſloined thoſe Cattle or Beaſts, or that Ox or Horſe, out of your Bailiwick, ſo that you could make no*

(*a*) *Note*; It lies not on a Suggeſtion only, that the Beaſts are eſloined. 11 *H.* 6. 1. *per Cotton.*

(*b*) But not out of Chancery. *M.* 42, 43 *Eliz. inter Grindal* and *Poundal*, in *C. B.* And yet if *Elongata* be returned on the *Alias*, *&c.* into Chancery then the *Withernam*, ſhall iſſue out of Chancery. 22 *H.* 6. 21. *per Brown.*

(*c*) It ſeems the Defendant ſhall have a Day in this Writ, (if he comes in) by Attachment, but not otherwiſe. See 7 *H.* 4. 27. 43 *Ed.* 3. 26. 35 *H.* 6. 47. as if *Elongata* be returned on the *Pluries* Replevin, then there is this Clauſe inſerted in this Writ. *Et ſi* the Plaintiff *fecerit*, *&c. tunc pone* the Defendant, *&c. ad reſpondend' tam Domino Regi de contemptu quam præfato Querenti de captione & injuſta detentione Catallorum prædictor'.* 2 *Eliz.* 180. For it ſeems there had not been any ſuch Clauſe in the *Withernam*, if it had been on a Plaint in the County. *Vide ibid.* & 44 *Aſſ.* 15. But then the whole ought to be removed by the *Pone*, and a ſpecial Return thereof, *viz. Quod nullum aliud Breve eſt, &c.*

Delivery thereof to the ſame A. *as you have ſignified to us: We*, &c. *command you, that without Delay you take Cattle or Beaſts*, &c. as the Caſe is, *in your Bailiwick to the Value of the Cattle*, &c. *of the aforeſaid* A. *in Withernam, and detain them until you can replevy to the ſame* A. *&c.*

[74.] Ant 69. And there are very many Cauſes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevy them, whereof divers of them do appear in the Regiſter, which a Man may there ſee.

A And if the Sheriff do return upon the *Pluries repleg'*, that he hath ſent unto the Bailiff of the Liberty who hath Return of Writs, *&c.* and that the Bailiff hath given Anſwer, that he cannot execute the Writ, becauſe he cannot have a View of the Cattle or Goods which were taken; then the Court in which ſuch Return is made ſhall award a Writ of *Withernam* directed unto the Sheriff, and the Sheriff ſhall thereupon make his Precept unto the Bailiff of the Liberty; and if the Bailiff of the Liberty doth not make a Return thereof unto the Sheriff, then the Sheriff ſhall return the whole Matter in Court, and thereupon the Court ſhall award a Writ of (*a*) *Withernam* and a *Non omittas* with the ſame: And the Form of the Writ ſhall be ſuch:

The King to the Sheriff of B. *greeting: Whereas we have many Times commanded you*, &c. (until) *or could not execute our Command many Times directed to you thereupon, and* R. *of* C. *Bailiff of the Liberty of Saint* Walric, *whom you have made to have the Return of our Writ, hath anſwered you, that he could not do Execution of that Writ, becauſe he could not have a View of the Cattle aforeſaid, as you have ſignified to us; wherefore we commanded you, that without Delay you ſhould take the Cattle of the aforeſaid* B. *in your Bailiwick in Withernam, and detain them until you could replevy to the ſame* A. *his Cattle*, &c. *according to the Tenor of our Commands*, &c. *thereupon to you directed, or ſhould ſignify to us the Cauſe*, &c. *why you could not*, &c. *And you have returned to us, that the ſame* R. *Bailiff of the Liberty aforeſaid, whom you have made to have the Return,*

(*a*) See 11 *H.* 4. 10. In Replevin a *Withernam* was awarded againſt the Defendant, after which the Defendant claims Property, and thereon Iſſue taken, the Plaintiff gages Deliverance, and a Writ iſſues to make Deliverance; the Sheriff returns *Elongata,* and ſo a *Withernam* was awarded againſt the Plaintiff, and on *Nihil* returned, a *Capias* iſſued; then the Iſſue is found for the Plaintiff, on which he has Judgment; and then on a *Pluries* returned, the Defendant prayed, and had an Exigent againſt the Plaintiff; and by *Tyrwhit,* the Defendant ſhall recover Damages againſt the Plaintiff for this Deteiner. *Quære* 1 *Co.* 75.

Note; The Writ of *Withernam* is *ad reſpond' Domino Regi de Contempt' & parti de Damno & injur'*. R. Entr. 701. See 35 *H.* 6. 47. *Danby* and *Moyle.* The Defendant ſhall recover Damages in *Withernam* on *Elongata* returned, in a Writ *de Return' habend'*; but others *contra.* See *Dyer* 41. If the Plaintiff be Nonſuit, he may have a ſecond Deliverance *inſtanter,* and it ſhall be a *Superſedeas* to the *Retorn' habend'*; and if a *Retorn' habend'* be ſued after a ſecond Deliverance granted, the Sheriff ought not to execute the ſecond Deliverance. *Note*; This prevents the Miſchief of a *Withernam* againſt the Plaintiff.

N. B. A. brings Replevin againſt *B.* and has Deliverance, and is afterwards Nonſuited, and a Return awarded, and becauſe an *Elongata* was returned, *B.* had the Beaſts of *A.* in *Withernam*; in this Caſe though the Plea was in the County, the Replevin is made in *C. B.* and the ſecond Deliverance ſhall not be of the Beaſts delivered in *Withernam,* but of thoſe that were firſt taken; and the Defendant ſhall be forced to gage Deliverance of thoſe taken in *Withernam,* (*quod Nota,*) and yet the Plaintiff himſelf is poſſeſſed of the Beaſts for which he complained, and if he makes his Plaint or Count of the Beaſts delivered in *Withernam,* it is not good. 25 *Ed.* 3. 47. 33 *Ed.* 3. *Avowry* 256. and 13 *Ed.* 3. *Replev.* 37. *per Cur'.* See alſo *Dyer* 59. accord. *per Cur'* in a ſecond *Deliverance.*

&c. *hath given you no Anſwer thereupon. We command you, that you do not omit becauſe of the Liberty aforeſaid, but that you enter into it, and take,* &c. *in Withernam, until,* &c. *according to,* &c. *before to you,* &c. *Witneſs,* &c.

B And if a Man diſtrain any Man's Cattle, and he ſue a Replevin by Plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Bailiff to replevy them, and the Bailiff return at the next County, that he cannot replevy the Cattle, becauſe they are eſloined, or that he cannot have View of the Cattle; then the Sheriff in the ſame County Court ought to make Inquiry if it be true which is returned, and if it be found ſo by the Jury, then the Sheriff *ex Officio* ſhall make a Precept unto his Bailiffs in the Nature of a *Withernam*, to take as many Cattle of the other Party: And if the Sheriff make ſuch Precept to take the other's Cattle in *Withernam*, and the Bailiff will not execute the Writ, then the Party may have a ſpecial Writ out of the Chancery directed unto the Sheriff, commanding him to do *Withernam*, and to do Execution of the firſt Judgment. And the Writ ſhall be ſuch:

The King to the Sheriff, &c. A. *hath ſhewed unto us, that* B. *and* C. *had unjuſtly taken and detained the Cattle of the aforeſaid* A. *and the ſame* A. *proſecuted before you for replevying to him the Cattle aforeſaid according to the Law and Cuſtom of our Kingdom; and although it was teſtified by* I. *your Bailiff, whom you ſent to replevy the Cattle aforeſaid of the ſaid* A. *and found by an Inquiſition made in your full County, (as the Cuſtom is) that the ſame Bailiff could not have a View of the ſame Cattle to replevy them to the aforeſaid* A. *wherefore it was conſidered in your full County, that the Cattle of the aforeſaid* B. *and* C. *in your Bailiwick ſhould be taken in Withernam, and detained until his Cattle aforeſaid could be replevied to him the ſaid* A. *according to the Law and Cuſtom of our Kingdom; yet the ſame* A. *hath not yet obtained Execution of the Conſideration aforeſaid, to the no little Damage and Grievance of him the ſaid* A. *And becauſe we are willing to relieve the aforeſaid* A. *in this Matter, we command you if it be ſo, that you take the Cattle of the aforeſaid* B. *and* C. *in Withernam, and detain them until you can replevy to the ſame* A. *his Cattle* (a) *aforeſaid according to the Law and Cuſtom of our Kingdom of* England, *and according to the Conſideration aforeſaid,* &c.

C And by that it appeareth, that the Sheriff may award *Withernam*, or Replevin ſued by Plaint, if it be found by Inqueſt in the County, that the Cattle are eſloined according to the Bailiff's Return, *&c.* But upon the *Withernam* awarded in the County, if the Bailiff do return, that the other Party hath not any Thing, *&c.* he ſhall have an *Alias* and a *Pluries*, and ſo infinite, and hath no other Remedy there. 9 Ed. 4. 48.

D But upon a *Withernam* returned in the King's Bench or Common Pleas, if the Sheriff do return, that the Party hath (b) not any Thing, *&c.* there a *Capias* ſhall be awarded againſt him, and Exigent, and Proceſs of Utlagary. 20 Ed. 4. 11.

In a Replevin ſued by Writ, at the *Pluries* returnable the Sheriff doth return, *Quod Averia elongata ſunt*, *&c.* Now if the Defendant appear, the Plaintiff ſhall not have a *Withernam*, becauſe the Defendant may gage Deliverance.

(a) *Vide ante* 69. 2 *H.* 4. 9. 22 *H.* 6. 40. 9 *Ed.* 4. 8. 16 *H.* 7. 2.

(b) See 28 *Ed.* 3. 57. and a *Sicut alias* there granted.

verance. And if the Defendant's Cattle be taken in *Withernam*, they ſhall (*a*) not be delivered to the Plaintiff, but the Sheriff ſhall keep them *quouſque*, *&c.* and the ſame appeareth by the Words of the Writ: But it is ſaid, that it is the Uſage in the King's Bench, that they ſhall be delivered unto the Plaintiff; by which it ſeemeth, that the Form of the Writ of *Withernam* there is in another Manner than it is in the Regiſter.

Note the laſt Caſe, 13 H. 7. the Defendant at the Exigent after the Withernam.

E (*b*) In a Replevin, at the *Pluries* returnable the Sheriff doth return, *Quod Averia elongata ſunt*, *&c.* and the Defendant doth appear, and pleadeth that he did not diſtrain them: Now the Plaintiff ſhall not have *Withernam.* And ſo if the Defendant at the *Pluries* returned appear, and plead that the Cattle are dead, in the Default of the Plaintiff, the Plaintiff ſhall not have *Withernam. Bro. Vouch. cap.* 7.

F And the Defendant in ſome Caſes ſhall have a *Withernam* againſt the Plaintiff: As, if the Defendant hath a Return awarded for him, and he ſueth a Writ *de Retorno habendo*, and the Sheriff return upon the *Pluries*, *Quod Averia elongata ſunt*, *&c.* he ſhall have a *Scire facias* againſt the Pledges, *&c.* according unto the Statute of *Weſt.* 2. and if they have nothing, then he ſhall have *Withernam* againſt the Plaintiff of the Plaintiff's Cattle. *Quod vide Trin.* 7 *R.* 2. (*c*).

Moderata Miſericordia.

[75.] 14 H. 4. 4.

A THE Writ of *Moderata* (*d*) *Miſericordia* lieth in Caſe where a Man is amerced in a Court Baron, or other Court which is not a Court of Record, outragiouſly for Treſpaſs or other Offence; then he may ſue this Writ

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(*a*) See the like Diverſity, 2 *H.* 4. 9. Yet *Quære R. Entr.* 702 and 704. that the Clauſe of the *Withernam*, whether for the Plaintiff, or the Defendant, is *Quod Vic' capiat in Withernam*, *&c.* *&* *ea præfato* A *deliberare*, *&c. detinend' quouſque*, *&c.* See for this, 25 *Ed.* 3. 4, 7. but more fully in *Gage Deliverance* 8. where the Sheriff in his County levied Goods of the Plaintiff in *Withernam*, after a Return by him awarded; on a Nonſuit, if he does not deliver them to the Defendant, the Plaintiff ſhall have an Action againſt the Sheriff. See 1 *Co.* 75. *b.* in his Entry of *Breedon*'s Caſe *accordant.*

(*b*) *Note*; If in a Replevin a *Withernam* be awarded, and afterwards the Defendant avows the Taking as his own Goods, or for Heriot, or denies the Caption, the Plaintiff ſhall gage Deliverance of the *Withernam*, but the Defendant ſhall not gage Deliverance of the Goods taken, and yet the Defendant might have come *in Pais* and claimed Property. 30 *Ed.* 3. 9. acc. So if *Withernam* be taken, and after Defendant comes into Court, and makes Conuſance as Bailiff to *I. S.* and prays Aid of him who joins in Aid, the Defendant ſhall have Deliverance of the Beaſts in *Withernam*; for it belongs to the Lord to make this Deliverance of the Beaſts in *Withernam*, and not to his Bailiff; *per Horton.* 7 *H.* 4. 28.

(*c*) See 5 *H* 5 7. by *Hull*, the Avowant may have *Withernam* notwithſtanding, for it was at Common Law. *N. B.* 7 *R.* 2.—— That it lay not before a *Scire facias* returned. See 9 *H.* 6. 42. a *Scire facias* againſt Pledges in an Attachment againſt the Party, and for Default at the *Diſtringas* Proceſs of Outlawry iſſued. See 9 *H.* 6. 42. 5 *H.* 4. 71. 13 *H.* 7. 2.

(*d*) See *Rot. Clauſ.* 38 *H.* 3. *M.* 7. A Writ to the Sheriff, *De non permittendo ad Diſtringend' pro Miſericordia contra Tenorem Mag' Chartæ.*

directed unto the Lord of the Court or unto his Bailiffs, commanding them, that they moderately amerce the Party according unto the Quantity of the Treſpaſs, *&c.* And this Writ is founded upon the Statute of *Magna Charta, cap.* 14. *Quod nullus liber Homo amercietur niſi ſecundum quantitatem Delicti, &c.* And the Proceſs upon this Writ is *Alias* and *Pluries*, and Attachment, and the Attachment ſhall be awarded againſt him againſt whom the original Writ was ſued; and the Form of the Writ is ſuch:

B *The King to the Bailiff of* I. *of* S. *greeting:* C. *hath ſhewed unto us, that whereas he was lately amerced in the Court of your aforeſaid Lord of* I. *for a ſmall Fault into which he fell; you require from him a grievous Ranſom contrary to the Tenor of the Great Charter of the Liberties of* England, *wherein is contained, That no Freeman ſhall be amerced but according to the Greatneſs of his Fault, and this, ſaving to him his Contenement, and ſaving to Villains their Wainage: And therefore we command you, that you take a moderate Amercement from the ſaid* C. *according to the Meaſure of his Fault, that no repeated Clamour thereupon may come to us. Witneſs,* &c.

And the Attachment ſhall be always directed unto the Sheriff, and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure,* &c. *then ſummon* B. *and* C. *Bailiffs of* D. *of* I. *that they be before our Juſtices at* Weſtminſter, *&c. to ſhew wherefore, ſeeing that the ſame* A. *was lately amerced in the Hundred or Court of their ſaid Lord of* I. *for a ſmall Fault into which he fell; and we, at the Requeſt of him the ſaid* A. *commanded the ſaid Bailiffs, that according to the Tenor of the Great Charter of the Liberties of* England, *they ſhould take from him a moderate Amercement according to the Greatneſs and Meaſure of his Fault; they the ſame Bailiffs having deſpiſed our aforeſaid Commands, have not ceaſed to extort from the ſaid* A. *a more grievous Ranſom thereupon by various Diſtreſſes, in Contempt of us, and to the great Damage of him the ſaid* A. *and contrary to the Tenor of the Great Charter aforeſaid, as it is ſaid: And have you there the Summoners,* &c. *Witneſs,* &c.

C And if a Man be amerced in a Court Baron, where he did not any Treſpaſs, but it is ſo preſented by the Inqueſt, *&c.* yet it ſeemeth he ſhall not have this Writ, if the Amercement be not outragious: But if the Steward of his own Head will amerce any Tenant or other Party without Cauſe, I conceive the Party ſhall have an Action of Treſpaſs, if he be diſtrained for that Amercement, and the Party ought not for to ſue his Writ of *Moderata Miſericordia.*

D If a Feme Covert be amerced for Treſpaſs, *&c.* if the Huſband be diſtrained for the ſame, he ſhall have this Writ, if the Amercement be outragious.

E But what ſhall be ſaid moderate Amercement, and what not, appeareth by the Words of the ſaid Statute, which ſaith, *Secundum quantitatem Delicti:* By which it ſeemeth, that if it exceed the Value of the Treſpaſs, it is not a moderate Amercement; and that ſhall be intended for the Value of the Treſpaſs, which is done unto the Lord, and not to him who ſhall have the Amercement: For if one Tenant do Treſpaſs unto another Tenant, he ſhall be therefore amerced in the Lord's Court by Preſentment of the Treſpaſs; but that Amercement ſhall not be unto the Value of the Damages which is done unto the Tenant, but having Regard unto the Wrong and Offence done unto the Lord for the Wrongs done unto his Tenant.

F And if a Man be Nonſuit in a Court Baron, he ſhall be amerced, and if it be outragious, he ſhall have this Writ of *Moderata Miſericordia:* And ſo ſhall the Defendant if he be amerced in any Suit brought againſt him, becauſe it is found againſt him; or that he makes Default to wage his Law at the Day given him in any Plaint ſued againſt him, *&c.* And if the Amercement be not moderate, he ſhall have this Writ of *Moderata Miſericordia, &c.*

G In a Court Baron, if two be amerced for one Treſpaſs outragiouſly, they ſhall not join in a *Moderata Miſericordia,* for they ſhall be ſeverally amerced, although the Treſpaſs be jointly done. And ſo is it in a Plaint ſued by two, Poſt. 76. D. Kitchen 44. if they be Nonſuit, the Amercements ſhall be ſeveral, and they ſhall not join in *Moderata Miſericordia*; yet if an Amercement be ſet jointly upon them, then they ſhall join in the Writ. But it ſeemeth this Amercement ought to be affeered by Perſons certain, when they are amerced for any Treſpaſs. And if the Amercement which is ſet be affeered by his Peers, then this Writ of *Moderata Miſericordia* doth not lie; for then it is according unto the Statute of *Mag' Chart', quod vid.* 10 *Ed.* 2. in Title of Actions upon the Statute in the Abridgment.

H And it is called *Miſericordia,* in Engliſh *Mercy,* for the Smallneſs thereof, by which it ſeemeth it ought to be leſs than the Offence: And then it ſeemeth they ſhall be ſeverally amerced for a joint Offence, becauſe one ſhall not be charged for the Offence of another; but they ſhall equally bear the Charge, and pay the Sum aſſeſſed.

10 H. 6. 7. 7 H. 6. 12. I And in the Common Pleas, the Courſe is, when there are divers Defendants, to make ſeveral Eſtreats of the Amercements, and to deliver them unto the Clerk of the Aſſiſe, and he ſhall deliver them unto the Coroners, and they uſe to *affere* the Amercements ſeverally.

K And if divers Demandants be amerced in a real Action for their Nonſuit, they make the Eſtreats ſeverally upon them, and deliver them as before unto the Clerk of the Aſſiſe, who delivereth them over unto the Coroners to *affere* the Amercements.

But in a perſonal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot [76.] ſhew how the Uſage hath been to make the Eſtreats againſt them; but it ſeemeth with Reaſon, that all ſhall be done in one Manner. For it cannot properly be ſaid that a Man hath Mercy ſhewed and offered unto him if he ſhall pay, or ſhall be put to more Charge for the Offence of another Perſon, which himſelf hath not done: For the Nature of the Word (Mercy) is, that a Man ſhall not be puniſhed ſo much as he hath deſerved. By which it appeareth, that every Amercement ſhall be or ought to be ſeverally aſſeſſed upon every one for his own Offence, and that to a leſſer Sum than he deſerveth to pay. *Quære* the Uſage and Manner thereof in the Common Pleas, and look 7 H. 6. 12. the Statute of *Weſt.* 1. *cap.* 18. by the Equity of which Statute the Uſage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Juſtices of Aſſiſe; and the Clerk of the Warrants in the Common Pleas doth make the Eſtreats, and doth deliver them unto the Clerks of the

Aſſiſe, to deliver them unto the Coroners to *affere* the Amercements, and the Coroners do aſſeſs the Amercements, and deliver them unto the Clerks of the Aſſiſes, and they deliver them back unto the Clerk of the Warrants, who maketh the Eſtreats: And then one of the Juſtices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Eſtreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the Form of the Eſtreat is ſuch:

A Staffordſhire: *Of* Henry Hart *and* William Maner, *becauſe they had not* John Brok, *late of* B. *in the County aforeſaid, Yeoman, foraſmuch as they were Bail,* &c.—— *Of* John N. *for himſelf and his Pledges, becauſe he hath not proſecuted his Writ againſt* N. H. *of* K. *in the County aforeſaid, Huſbandman, in a Plea of Debt,* &c.——— *Of* Stephen White, *for his falſe Clamour againſt* D. *of,* &c. *in a Plea of Detinue,* &c. And ſo the Eſtreat doth rehearſe the Cauſe for which he was amerced, *&c.* For the Juſtices do not aſſeſs any Sum for any Amercement upon any Perſon, but make their Entry as aboveſaid; and then the Coroners do ſet the Sum upon the Heads of every of them; as upon every one of them four Shillings or ſix Shillings, as they ſhall think fit in their Diſcretions, *viz.* ſeverally upon every of them.

B And by the Statute of *Magna Charta, cap.* 14. no Spiritual Perſon ſhall be amerced according to his Spiritual Benefice, but according unto his Lay Fee, and according unto the Quantity of the Treſpaſs; and if he be otherwiſe amerced, he ſhall have a Writ upon the ſaid Statute againſt the Sheriff, or him who amerced him. And the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Whereas it is contained in the Great Charter of the Liberties of* England, *That no Eccleſiaſtical Perſon ſhall be amerced according to the Quantity of his Eccleſiaſtical Benefice, but according to his Lay Fee; and now we underſtand from the Complaint of* S. *Parſon,* &c. *that although he holds no Lay Fee, nevertheleſs you have at your own Will grievouſly amerced him the ſaid* S. *in your Torn, in ſuch a Hundred, upon ſome Matters preſented before you in the ſame Torn, he the ſaid* S. *not having been thereupon ſummoned, nor lawfully convicted, and that you unjuſtly intend to levy that Amercement upon his Eccleſiaſtical Goods, to the no ſmall Damage of him the ſaid* S. *and contrary to the Charter aforeſaid: We being unwilling that he the ſaid* S. *ſhould be aggrieved in this Matter, do command you, if it be ſo, that then you do not cauſe him the ſaid* S. *to be in ſuch Manner amerced before you, or any Amercement to be levied upon his Eccleſiaſtical Goods contrary to the Tenor of the Charter above-mentioned; and the Diſtreſs, if any,* &c. *Witneſs,* &c.

C And upon this he may ſue an *Alias* and *Pluries*, and Attachment, unleſs the Sheriff do according to the Writ directed unto him.

D And it ſeemeth that the Party may ſue a Writ upon the Statute by *Pone*, *&c.* if he will, againſt the Sheriff or the other who amerced him, becauſe that the Statute is a (*a*) Prohibition in itſelf, and need not ſue ſuch a Writ as aforeſaid. And by the Statute of *Magna Charta* every Amercement in a

Ant. 75. Kitch. 43.

(*a*) And therefore it is no Plea to ſay, that no Prohibition was delivered to him. And *Note*; If the Amercements be afterwards aſſeered *per Pares*, this Writ does not lie. See there the Writ brought againſt the Bailiff. 18 *Ed.* 2. accordant, *Sur le Stat.* 34.

Court Baron ought to be affeered by two Tenants of the Manor upon Oath. And if the Steward or Bailiff will aſſeſs any Amercement without Affeerment, then he who is amerced ſhall have ſuch Writ:

The King to the Bailiffs of W. *Biſhop of* S. *greeting: Whereas it is contained in the Great Charter of the Liberties of* England, *That no free Man ſhall be amerced for a ſmall Fault, but according to the Meaſure of his Fault, and for a great Fault according to the Greatneſs of the Fault, ſaving to him his Contenement, and a Merchant in the ſame Manner, ſaving to him his Merchandiſe, and any other's Villain than our's ſhall be in the ſame Manner amerced, ſaving his Wainage, if he fall into our Hand; and none of the ſaid Amercements ſhall be aſſeſſed but by the Oath of honeſt and lawful Men of the Vicinage, as in the ſame Charter is more fully contained: And now we underſtand from the Complaint of the Men and Tenants of the Manor aforeſaid, that you wilfully aſſeſs thoſe Men and Tenants in great Sums of Money, when they fall into the Amercement of the Court of the ſame Manor for any Duty, not permitting that the ſame Amercement be affeered by the Oath of the Men and Tenants of the ſame Manor, to the no ſmall Damage of them the ſaid Men and Tenants, and contrary to the Tenor of the Charter aforeſaid: We, willing that Charter to be inviolably obſerved in all and every one of its Articles, do command you that you, wholly ceaſing from wilfully aſſeſſing ſuch Sums upon the Men and Tenants aforeſaid when they fall into Amercement, do permit ſuch Amercement to be affeered by the Oath of honeſt and lawful Men of the ſame Court, according to the Tenor of the Charter aforeſaid. Witneſs*, &c.

[77.] And he may ſue an *Alias* and a *Pluries* thereupon, *vel cauſam nobis ſignifices*, and afterwards an Attachment againſt the Bailiffs, or him who aſſeſſeth the Amercement.

Writ de Nativo habendo.

THE Writ (*a*) *de Nativo habendo* lieth for the Lord who claimeth the Inheritance in any Villain, when his Villain is run from him, and is remaining within any Place out of the Manor unto which he is Regardant, or when he departeth from his Lord againſt the Lord's Will: And the Writ ſhall be directed unto the Sheriff; and if the Sheriff will (*b*) not ſerve the Writ, he ſhall have an *Alias* and *Pluries*, and Attachment againſt the Sheriff, if need be. A

(*a*) And *Note*; In a Writ of Neif, the Plaintiff ſued by Attorney; he had enfranchiſed the Villain, in 26 *Ed* 3. 76.

(*b*) See if the *Pluries* determines the Power of the Sheriff in this Writ alſo, as in Replevin, it was much doubted, but it ſeemed it ſhould; and if the *Pluries* be returned in *B. R.* they may hold Plea there. 11 *H.* 4. 49. It ſeemed alſo, that if on the firſt Writ the Sheriff ſent to the Bailiff of the Franchiſe, who does nothing (or gives no Anſwer) the Sheriff cannot return this, but ought to execute the Writ himſelf.

See 7 *H.* 6. 31. on a *Nativo habendo* removed out of the County by *Pone*, whereon the Sheriff had returned *Non inventus*, a *Capias* lies, and on *Non inventus* returned thereon, a *Latitat* went to the Sheriffs of *London*.

But

B But if a Man have an Eſtate but for Term of Life, or for Years, in a Villain, it ſeemeth he ſhall not have this Writ of *Nativo habendo*, becauſe this Writ is in the Nature of a Writ of Right for to recover the Inheritance in the Villain, and the ſame appeareth by the Count in the Writ: *Quære tamen.*

V. 1 & 2 Eliz.

C And the Sheriff may ſeize the Villain, and deliver him unto his Lord, if the Villain confeſs unto the Sheriff that (*a*) he is his Villain; but if the Villain ſay to the Sheriff, that he is Frank, then it ſeemeth that the Sheriff ought not to ſeize him: As it is in a *Replevin*, if the Defendant claim Property, the Sheriff cannot replevy the Cattle, but the Party ought to ſue a Writ *de Proprietate probanda:* And ſo if the Villain ſay that he is a free Man, *&c.* then the Sheriff ought not to ſeize him, but then the Lord ought to ſue a *Pone* to remove the Plea before the Juſtices in the Common Pleas, or before the Juſtices in Eyre. But if the Villain purchaſe a Writ *de Libertate probanda* before the Lord hath ſued the *Pone* to remove the Plea before the Juſtices, then that Writ of *Libertate probanda* is a *Superſedeas* unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Juſtices, or till the Day the Plea be adjourned before the Juſtices, and that the Lord ought not to ſeize the Villain in the mean time. But at this Day the Writ of *Libertate probanda* is of little Effect, becauſe by the Statute of 25 *Ed.* 3. *cap.* 18. the Lord may ſeize his Villain and alledge Villainage in an Action brought againſt him by the Villain, although he hath a Writ *de Libertate probanda* depending, which is determined before the Juſtices *in Banco*, or the Juſtices in Eyre.

Dyer 173. where this Writ lieth, and out of what Court. And vide 1 Ed. 4. 8, 9. a good Caſe. 7 H. 4. 45.

D And if the Lord ſue a *Nativo habendo*, and the Villain purchaſe this Writ of *Libertate probanda*, by that the Sheriff ſhall not proceed farther in the Writ of *Nativo habendo*, but the whole Plea ſhall be adjourned before the Juſtices in Eyre; and then the Writ of *Nativo habendo* and the Record ſhall be ſent

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(*a*) If on a Plaint in Replevin (as 29 *Ed.* 3. *Replevin* 35.) or on a Writ of Replevin, the Defendant claims Property, and it is received by the Sheriff (as 30 *Ed.* 3. 22. 31 *Ed.* 3. *Propr' proband'* 4. as it ſeems for taking Iſſues received by the Sheriff) a *Propr' probanda* ſhall iſſue, although the Sheriff cannot make Replevin, and Day ſhall be given to the Defendant in Bank to anſwer to the King for the Contempt, and to the Party for the Damages on the Claim; yet it ſeems the Replevin ſhall continue to anſwer Damages to the Plaintiff for the Taking. 1 *Ed.* 4. 9. *b.* 7 *H.* 4. 28, 46. 21 *Ed.* 4. 76. But if it be found for the Defendant, it ſeems that all is determined, and the Plaintiff cannot have a new Replevin, for the Sheriff cannot execute it, but he may have a Writ of Treſpaſs. 31 *H.* 6 *Propr' proband'* 5. 31 *Ed.* 3. *ib.* 3. or elſe he may remove the Plaint in the County by *Recordare*, (though in Truth it is determined there, by the Claim of Property, *&c.*) and ſo try the Property *de novo*, and the Plaintiff ſhall not be eſtopped by the Trial in the *Propr' proband'*, which is only an Inqueſt of Office. 30 *Ed.* 3. 21, 22. 31 *Ed.* 3. *Replevin* 35.

And *Note*; If the Property be found for the Plaintiff, and at the Day of the Return, the Sheriff returns an Eſloinment, and the Defendant makes Default, a *Withernam* ſhall be granted, and ſo a *Capias*, *Pluries* and Exigent. 39 *Ed.* 3. 30. But ſome held that the Plaintiff in that Caſe ſhall recover the whole in Damages. See 7 *H.* 4. 28. *per Hull*, when the Defendant comes in by Attachment after Property found for the Plaintiff, the Plaintiff may have two Counts againſt him, one on the *Propr' probanda*, and another on the Replevin. 7 *H.* 4. 46. If the Replevin be returnable in Chancery, *ſicut alias vel Cauſam*, *&c.* And the Claim of Property returned thereon, then the *Propr' probanda* ſhall iſſue out of the Chancery; but if on the *Pluries* the Claim is returned in *B. R.* or *C. B.* the *Proprietate probanda* ſhall iſſue from thoſe Courts. *Dyer* 173.

before the Juſtices in Eyre, and the Lord ſhall declare thereupon, and the Villain ſhall make his Defence, and plead thereunto; and the Villain ſhall not declare upon the Writ *de Libertate probanda*, nor any Thing ſhall be done thereupon; for that Writ is but a *Superſedeas* to ſurceaſe for the Time, and to adjourn the Record and the Writ of *Nativo habendo* before the Juſtices in Eyre: And that appeareth by the Forms of the Writs of *Nativo habendo* and of *Libertate probanda*, which are ſuch:

E *The King to the Sheriff, greeting: We command you, that juſtly and without Delay you cauſe* A. *of* C. *to have* B. *his Villain and Fugitive, with all his Cattle and his whole Train, whereſoever he ſhall be found in your Bailiwick, unleſs he be* Poſt. 79. A. *in* (*a*) *our Demeſne, who fled from his Land after the Coronation of the King Lord* Henry, *Son of King* John: *And we prohibit, upon our Forfeiture, that no one unjuſtly detain him. Witneſs*, &c.

The Form of the *Libertate probanda* is ſuch:

Libertate probanda.

F THE *King to the Sheriff*, &c. A. *and* B. *her Siſter, have ſhewed unto us, that whereas they are free Women, and ready to prove their Liberty*, F. *claiming them to be his Niefs unjuſtly vexes them*; *and therefore we command you, that if the aforeſaid* A. *and* B. *ſhall make you ſecure touching the proving their Liberty, then put that Plea before our Juſtices at the firſt Aſſiſes, when they ſhall come into thoſe Parts, becauſe Proof of this Kind belongeth not to you to take*; *and in the mean time cauſe the ſaid* A. *and* B. *to have Peace thereupon, and tell the aforeſaid* F. *that he may be then there, if he will, to proſecute his Plea thereof againſt the aforeſaid* A. *and* B. *And have there this Writ. Witneſs*, &c.

G 11 H. 4. 48. Gaſcoign ac. And now by theſe two Writs it appeareth, that the Lord who ſueth the Writ *de Nativo habendo* ſhall purſue his (*b*) Plaint upon the Writ of *Nativo*

(*a*) In a *Latitat* to the Sheriff of *London*, on a *Nativo habendo* removed hither by *Pone*, the Sheriff returns *Quod Civit' Lond' eſt antiquiſs' Civit' Camera Regis, Antiquu' Dominicum Regis, & conſuetudinem habet & habuit a tempore quo, &c. Quod ſi aliquis ſenilis Conditionis manſerit in Civitate per unum Annum & unum Diem quod ex tunc non erit capt' Virtute Brevis de Nativo habendo.* And it was moved, that the Sheriff ſhould be amerced. 1. For that by the Record of Domeſday, it appears, that it is not Ancient Demeſne. 2. For that this Cuſtom of *London* is againſt Common Right, and prejudicial both to Citizens and Strangers, and therefore void. 3. That it is a Cuſtom in the Negative, and ſo does not lie in Uſage. 4. Tho' the Cuſtom were good, yet it ſhould not come in by the Sheriff's Return, but by Plea. But it is otherwiſe of Ancient Demeſne, becauſe there the Writ warrants ſuch a Return, *&c.* See 7 *H.* 6. 32. and the Reſidue thereof. 8 *H.* 6. 3. 4.

(*b*) See accord. by *Lodd.* for the Sheriff has nothing to adjourn in Eyre; but by *Rolph*, if the Lord do purchaſe a *Nativo habendo*, and after that a *Pone*, and then a *Libertate probanda*, and deliver it to the Sheriff, and is afterwards Nonſuit, and then purchaſes a new Writ of *Nativo habendo*, the Sheriff may adjourn it for (Trial of) the *Libertate probanda*. 11 *H.* 4. 49. *Quære.*

If in a *Libertate probanda*, the Parties are at Iſſue on the Franchiſe and Villainage, if pending the Iſſue, the Defendant ſeizes the Plaintiff, he ſhall be fined; *contra*, in Treſpaſs for a Villain, and the Lord, pending the Iſſue, ſeizes his Goods. 9 *H.* 5. 1. *b.*

habendo, and ſhall declare thereupon, *&c.* and that the Villain ſhall make Defence, and upon that Writ *de Nativo habendo* the Freedom ſhall be tried. And alſo it ſeemeth by theſe Writs, that a Writ *de Libertate probanda* doth not lie, if not upon a Writ *de Nativo habendo* ſued out before by the Lord.

H But it appeareth in 12 *H.* 3. *Itin' North'*, that the Villain ſued a *Libertate probanda, & obtulit ſe* at the fourth Day againſt the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchiſed; and he had Writ unto the Sheriff, that he do not ſuffer the Lord to trouble him after: *Quod vide* in Title *Villainage* in the Abridgment; *vide* 47 *H.* 3. a good Caſe of that Matter. 12 *Ed.* 3. *Villainage* 44.

Fitz. Villainage 39.

A And when he ſueth the *Nativo habendo*, he ſhall enter a Plaint before the Sheriff in the County, as he ſhall do, if he ſue a Replevin by Writ unto the Sheriff, he ought to enter his Plaint before the Sheriff; ſo ſhall he do upon the *Nativo habendo:* And the Plaintiff ſhall recite how he is his Villain, and how that he fled from him, *&c.* And by the Writ of *Libertate probanda* that Plaint ſhall be removed before the Juſtices of Eyre, or before the Juſtices *de Banco*, and then the Matter ſhall be tried before them, *&c.* Or the Lord may remove the Plaint by a *Pone* before the Juſtices of the Common Pleas, and thereupon he ſhall have Proceſs againſt the Villain, *&c.* for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the Words in the Writ of *Libertate probanda*, *viz. Quia hujuſmodi Probatio non pertinet ad te capiend'*, *&c.* 11 *H.* 4. 49. *per Norton.*

[78.]

Fitz. Villainage 3.

B And it is good for the Lord, that when he ſueth the *Nativo* (*a*) *habendo* unto the Sheriff, that forthwith he ſue his *Pone* unto the Sheriff to remove the Plaint before the Juſtices of the King's Bench: For if after the *Nativo habendo* ſued, the Lord ſue a *Pone* to remove the Plaint before the Juſtices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain ſueth *Libertate probanda*, and delivereth the ſame to the Sheriff, by which the Sheriff adjourneth the Plaint before the Juſtices in Eyre, and returneth the Matter upon the *Pone* before the Juſtices of the King's Bench; now the Juſtices of the Bench ought not to proceed upon that *Pone* againſt the Villain, becauſe that the Sheriff hath returned, that he hath adjourned the Matter before the Juſtices in Eyre by the Writ of *Libertate probanda*, *quod vide Hil.* 26 *Ed.* 3. and yet the *Pone* was of elder Date than the Writ *de Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda.*

11 H. 4. 43. Gaſcoign. Old Nat. Brev. 46. 25 Ed. 3. 49. Villainary 12. that the Party is without Remedy, if not againſt the Sheriff.

(*a*) See a notable Caſe, 11 *H.* 4. 48. In a *Nativo habendo*, at the *Pluries* the Sheriff returns a *Mandavi Ballivo*, who did nothing thereon, and it excuſed him of Contempt. (*Quære*,) then a *Non omittas* iſſued on which he returned, that before the Delivery thereof to him, the Defendant had delivered him a *Libertate probanda*, ſo that he could do nothing; and by all the Juſtices he was amerced. 1. Becauſe after the Return of the Writ, the Sheriff had nothing to adjourn by Force of the *Libertate probanda.* 2. Becauſe the *Non omittas*, though awarded after the *Libertate*, ought to be executed, whether it iſſued by Wrong or Right; (ſo it ſeems to differ from a *Pone*, for that is only to remove the Record, which in Effect was removed before, by the Adjournment, by Force of the *Libertate probanda*, but the *Non omittas* is to another Intent.) 3. For that by the *Pluries*, the Power of the Sheriff to hold Plea is determined, *ſed Quære*, for then to what Effect are theſe Words in the Writ, [*habere facias*]. And alſo, if ſo, no *Non omittas* ought to iſſue, but only Proceſs againſt the Party, but afterwards the Sheriff in this Caſe was amerced, and a *Non omittas ſicut alias* awarded.

C And if a Man ſueth ſeveral Writs of *Nativo habendo* againſt two, the two may join in a *Libertate probanda*, notwithſtanding the ſeveral Writs.

D And a Man can join in a Writ of *Nativo habendo* but two Villains, but in favour of Liberty many Villains may join in a *Libertate probanda*.

E (*a*) And it ſeemeth that the Villain may ſue a *Libertate probanda* before the Juſtices *de Banco*, as well as before the Juſtices in Eyre, although there be no ſuch Writ in the Regiſter. But if ſuch Writ be made returnable before the Juſtices *de Banco*, it ſeemeth it is good, and they ſhall proceed thereupon as if it were before Juſtices in Eyre.

F (*a*) In a Writ of *Niefe*, if the Plaintiff be Nonſuit after Appearance, the Defendant ſhall be for ever enfranchiſed; *quod vide M.* 12 *Ed.* 2. and upon Departure in Deſpite of Court, where he appeareth, and ſaith he will ſeek Counſel, and afterward he is demanded, and maketh Default, there the Villain ſhall be for ever enfranchiſed: And ſo upon a *Retraxit*, if the Plaintiff ſay that he will not purſue his Writ of *Niefe*, the Defendant ſhall be enfranchiſed for ever (*b*).

8 Ed. 4. 16. by Martin, all of the Blood may join. But if they be of the Half blood they ſhall not join. Br. Villainage 68. 6 E. 2. Vill. 26. after a Nonſuit he was enfranchiſed during the Plaintiff's Life. Br. Villainage 26. 29 Ed. 2. cont. before Appearance. 19 Ed. 2. Vill. 31. 39 Ed. 2. Fitz. Vill. 34. the Plaintiff count upon a Confeſſion, and the Defendant acknowledge it, and after the Plaintiff was Nonſuit, and *per Cur'* it is an Enfranchiſement for ever. 30 Ed. 1. Vill. 46. Harvy and Mitton, ſhe is enfranchiſed but during the Marriage; Broughton cont. King took the Difference where the Lord marrieth the Niefe, and where a Stranger marrieth her.

G And if a free Man marrieth a Woman who is a *Niefe* unto another, ſhe ſhall be for ever free, although that the Huſband dieth, and ſhe ſurvive him, and that by *Britton* in his Book *in favorem Libertatis* (*c*). And it ſtands with Reaſon that the Law be ſuch, becauſe that ſhe and her Huſband are but one Perſon in Law, and ſhe ought to be of the ſame Nature and Condition to all Intents as her Huſband is; but the Huſband is for ever free without any Condition in Law or otherwiſe, and by Conſequence the Wife ought to be of the ſame Condition and Nature as her Huſband is; and then if he be once clearly diſcharged of Villainage to all Intents, ſhe cannot be a *Niefe* afterwards without her own ſpecial Act, as by Divorce, or Confeſſion in a Court of Record, and that in favour of Liberty: For a free Woman ſhall not be Villain for taking of a Villain to be her Huſband.

28 Aſſ. 34. Br. Vill. 23. A frank Man marries a Niefe with Licence, the Lord enfeoffed I. S. the Huſband died, the Wife is Niefe, as before, vide 18 Ed. 2. Vill. 35. cont. and there by Devon ſhe remaineth Niefe, but the Seizure is ſuſpended. 13 H. 3. Vill. 43. ſhe ſhall not be produced to prove Villainage during the Coverture. 30 Ed. 1. Vill. 46. cont. 31 Ed. 3. Vill. 21. cont. See Litt. 42.

H In a Writ of *Niefe* it behoveth the Lord who ſueth the Writ to bring with him two Perſons at the leaſt, who are of the Villains Blood, that will confeſs them to be Villains, otherwiſe the Writ ſhall abate: And what ſhall be ſufficient Proof, and what not, ſee in the Title of *Villainage* in the Abridgments.

13 Ed. 1. Vill. 38. 19 H. 6. 32. ac. 19 Ed. 2. Vill. 32. Couſin Female ſhall not be brought to prove the Male Villain. 13 Ed. 3. Vill. 36. ac. Old Nat. Brev. 46. ac. Old Tenures Br. Vill. 68.

(*a*) See 6 *Ed.* 2. *Villainage* 26. *Litt.* 45. 12 *Ed.* 2. *Villainage* 24. 19 *Ed.* 2. *Villainage* 31. *contr.* *Quære* 13 *H.* 3. *Villainage* 43.

(*b*) See 4 *Ed.* 4. 25. 30 *Ed.* 2. *Villainage* 46. 18 *Ed.* 2 *Villainage* 30. *con.* 29 *Aſſ.* 4. *con.*

(*c*) See accordant 11 *H.* 48. 2 *H.* 4. 25.

ments. But in a *Nativo habendo*, after the Plea is removed by a *Pone*, if the Defendant will confeſs himſelf to be Villain, the Plaintiff needeth not to bring any Proof thereof.

I If two bring a *Nativo habendo*, the Nonſuit of one of them is the Nonſuit of them both; for Summons and Severance lieth not in that Writ. But in a *Libertate probanda* it is otherwiſe, for there the Nonſuit of the one ſhall not prejudice the other.

K And it appeareth by the Regiſter, that the Sheriff cannot ſeize the Villain
by Force of this Writ of *Nativo habendo*, although that the Words of the
Writ are, *Habere facias* A. *nativum & fugitivum ſuum*; for theſe Words give
him Power to hold Plea, and not otherwiſe, as it appeareth in 2 *H.* 4. in a 2 H. 4. 24.
Faux Impriſonment. But if the Villain doth confeſs unto the Sheriff that he is
a Villain, then it ſeemeth reaſonable that the Sheriff ought to ſeize him, ſaving
the Opinion of that Book. But the Statute now maketh the Matter clear,
that the Lord may ſeize him, and ſo the Sheriff at his Requeſt. And the
L Proceſs in the *Nativo habendo* is Summons, Attachment and Diſtreſs.

M In a *Nativo habendo* the Plea was removed by a *Pone*, and the Sheriff returned thereupon *Non eſt inventus*, for which a *Capias* was awarded, and after upon Return of *Non eſt inventus* a *Latitat* was awarded, upon a Surmiſe made that he was in a foreign County. *P.* 7 *H.* 6.

N And in the *Libertate probanda* the Proceſs is as upon the *Pone* ſued to re- [79.]
move a Plaint in the County upon a Replevin, Summons, Attachment and
Diſtreſs. And the Form of the *Pone* upon a *Nativo habendo* is ſuch:

The King to the Sheriff, &c. *Upon the Petition of the Plaintiff put the Plea which is in your County by our Writ between* A. *and* B. *whom the ſame* A. *claims to be his Villain and Fvgitive*; *and ſummon*, &c. *the aforeſaid* B. *that he be then there to anſwer the aforeſaid* A. *thereupon: And have there the Summoners and this Writ and the other Writ.*

A And if the Villain do remain in Ancient Demeſne of the King in the King's (*a*) Hands, and hath remained there by a Year and a Day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* ſo long as he remaineth there: But if he hath not remained within the Ancient Demeſne of the King a Year and a Day, but for Half a Year, or other Time which doth not make a Year and a Day, then the Lord ſhall have ſuch Writ unto the Sheriff:

The King to the Sheriff, &c. *We command you, that unleſs* A. *whom* B. *claims* Ant. 77. E.
to be his Villain and Fugitive in your County by our Writ, hath remained in our Demeſne of S. *for one Year and a Day without Challenge, let not the Plea aforeſaid remain in the County aforeſaid, for that he hath remained in our Demeſne for leſs Time. Witneſs*, &c.

But it appeareth by the Writ, that if the Lord claim him within the Year and Day that he came into the Ancient Demeſne, that then the Villain ſhall not have Advantage of his ſtaying there: But it ſeemeth that the Lord ought

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(*a*) See *Nat.* 46. *contra*, if it be in the Hands of any other Lord, but *Note*; The Lord of a Manor in Ancient Demeſne might have Villains Regardant at his Death. 39 *Ed.* 3. 36. and *quære*, if all Tenants of Ancient Demeſne Lands were not originally Villains, and ſo came to the King's Grantees.

to claim the Villain within every Year and Day that the Villain ſtayeth within Ancient Demeſne, as he ſhall make his continual Claim to ſave his Entry into any Land. But if the Villain do remain in any other Manor than in Ancient Demeſne, which is in Poſſeſſion of other Lord than the King, and there ſtayeth a Year and a Day, or for many Years, without any Claim made by the Lord, notwithſtanding that the Lord may take and ſeize him, or have a ſpecial Writ of *Nativo habendo* againſt his Villain directed unto the Sheriff, as above is ſaid.

24 Ed. 3. Br. Vill. 26. If a Man purchaſe a Villain of another unto him and his Heirs, and the Villain runneth from him, he ſhall not have this Writ *de Nativo habendo*, becauſe he hath no Proof of his Blood who will confeſs them to be Villains unto the Plaintiff; and if he bring Men of the Villains Blood, who confeſs them to be Villains to a Stranger, and not to the Plaintiff, the ſame is not ſufficient Proof. *Quære tamen.* B

And the Lord may have a Writ unto the Sheriff to aſſiſt him to diſtrain his Villains, and the Writ is, *The King to the Sheriff*, &c. *We command you, that you be in Aid of* A. *of* F. *when he himſelf is not able to diſtrain his Villains of* N. *to do to him the Cuſtoms and Services due and accuſtomed. Witneſs*, &c. See the Statute *Anno* 1 *R.* 2. *cap.* 6. C

And when the King makes Tallage of his Ancient Demeſne Lands in his Hands throughout the Realm, then the other Lords who have Ancient Demeſne Lands of the King in Fee-farm, ſhall have ſuch Writ to tax them; and the Writ is ſuch: D

The King to the Sheriff, &c. *Becauſe we have made our Demeſnes throughout* England *to be taxed, we command you, that if the Manor of* C. *was ſome time our Demeſne, or of our Anceſtors heretofore Kings of* England, *and hitherto hath been accuſtomed to be taxed, then cauſe* A. *to have a reaſonable Tallage of his free Tenants in the Manor aforeſaid, as hath before been accuſtomed to be done. Witneſs*, &c.

And if the King's Villains do convey themſelves out of the Manor, then a ſpecial Writ ſhall be directed unto the Sheriff, that he inquire by the Oaths of honeſt and good Men the Names of them, and where they abide, and that he make them return, and abide within the Manors as before. E

If a Woman ſueth a Writ of *Libertate probanda*, the Form of the Writ is ſuch: Alice *hath ſhewed to us, that whereas ſhe is a free Woman*, &c. *and ready to prove her Liberty*, &c. as above. F

Writ

Writ de Securitate Pacis.

G THIS Writ lieth when a Man is in Fear or Doubt that another will beat or aſſault him, and lieth properly where one Man doth threaten another Man to kill him, beat him, or aſſault him; then may he come into the Chancery, and pray to have ſuch a Writ unto the Sheriff, and the Form of the Writ is ſuch:

The King to the Sheriff of Lincolnſhire, *greeting: Becauſe* A. *of* B. *hath heavily complained to us, that* C. *openly threatens him of his Body; we Command you, that you cauſe the ſame* A. *to have of the aforeſaid* C. *our firm Peace according to the Cuſtom of* England, *ſo that you may be ſecured that Damage or Peril may not come to the ſame* A. *in his Body, by the ſaid* C. *or by his Procurement. Witneſs,* &c. Or thus: *Of the Burning of his Houſes openly threatens, we Command you,* &c. *ſo that,* &c. *Damage come not to the ſame* A. *in his Houſes aforeſaid, by ſuch Burning,* &c. And a Man may have a Writ for the Safety of his Body, and for the Burning of his Houſes, all in one Writ. And he may have an *Alias* and a *Pluries*, and Attachment againſt the Sheriff, if he does not his Office, *&c.*

H And by the ancient Courſe of Law he ought to take his Oath upon a Book before he have this Writ, before a Maſter of the Chancery: But now they uſe to ſue forth ſuch Writs by their Friends, who will ſue for them without any Oath made; and the ſame is ill done, becauſe they are many Times ſued, more for Vexation than for any good Cauſe; and the Juſtices of the King's Bench will not grant any Writ for Surety of the Peace, without making Oath that he is in Fear of corporal Damage. And the Juſtices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of the Peace, if the Party who doth require the ſame will not take his Oath that he requireth the ſame not for Malice, but for the Safety of his Body.

Fitz. Juſt. del Peace.

A And if a Man hath ſued a Writ againſt one directed unto the Sheriff, and the Sheriff take Security of him to keep the Peace, and afterwards he breaks the Peace againſt him who demanded the ſame; he which demanded the Surety of Peace ſhall have Attachment againſt him to find Sureties; and the Writ is ſuch:

[80.]

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure,* &c. *put,* &c. B. *that he be before our Juſtices,* &c. *to ſhew wherefore, ſeeing that the aforeſaid* B. *threatened the aforeſaid* A. *of his Body, and the aforeſaid* A. *upon that Occaſion brought to you our Writ of having the Peace thereupon, he the ſame* B. *although he gave you Security, that by him or his Procurement, Damage or Peril ſhould not come to the aforeſaid* A. *of his Body, nevertheleſs the aforeſaid* B. *with Force and Arms hath made an Aſſault upon the aforeſaid* A. *at* W. *and him,* &c. *to the manifeſt Contempt of us, and to the great Damage of him the ſaid* A. *and againſt our Peace: And have you there the Pledges and this Writ. Witneſs,* &c.

And upon this Writ the Plaintiff ſhall recover Damages, and the Defendant ſhall be fined for his Contempt, if he be found guilty.

And if any one will have a Writ for Surety of the Peace againſt any one who dwelleth within the Cinque Ports, then he ſhall have a Writ out of the Chancery directed unto the Conſtable of *Dover*, and unto the Warden of the Cinque Ports, and the Writ ſhall be ſuch: B

The King to his beloved and faithful N. *his Conſtable of* Dover, *and to the Warden of his Cinque Ports, greeting: We Command you, that having heard the Complaint of* A. *becauſe that* B. *being of the Liberty of the Cinque Ports threatens,* &c. *and having called before you the Parties aforeſaid, and having thereupon heard ſeverally their Reaſons, that hereupon you cauſe to be done to the ſame* A. *due and ſpeedy Fullneſs of Juſtice, as of Right, and according to the Law and Cuſtom of the aforeſaid Ports ought to be done, and at other Times hath been accuſtomed to be done in the like Caſe. Witneſs,* &c.

But it is a common Opinion, the Security which the Sheriff ought to take of the Party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to ſay, to bind the Party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houſes, *&c.* But now after the Statute of 1 *Ed.* 3. *cap.* 16. which appointeth that certain Perſons ſhall be aſſigned in the Chancery to keep the Peace, there are other Forms of Writs for the Eaſe of the People who will have the Peace againſt other Perſons, which Writs ſhall iſſue out of the Chancery; and ſome of them are directed unto the Juſtices of the Peace, and unto the Sheriff, and ſome are directed only unto the Sheriff: And theſe Writs are of other Form, which is ſuch: C

1 Ed. 3. c. 16.

The King to his beloved and faithful I, &c. *and his Companions our Juſtices aſſigned to keep our Peace in the County of* S. *greeting.* Or thus: *To the Keepers of our Peace in the County of* S. &c. *and to the Sheriff of the ſame County, and to every one of them, greeting.* Or thus: *To the Sheriff of* S. *greeting:* A. *hath beſought us, that whereas he is grievouſly and manifeſtly threatened by* E. *of his Life and maiming of his Members, and alſo of burning his Houſes, we would provide for the Security of him the ſaid* A. *in this Behalf; We granting the Supplication aforeſaid, command you, (or thee) firmly injoyning that you make the ſaid* E. *to come perſonally before you, (or thee) and to find ſufficient Manucaptors who will be Bail for him under a certain Penalty to be impoſed upon them by you, (or thee) for which they or you will anſwer to us.* Or thus: *And that by any Means ye (or you) compel him the ſaid* E. *to find ſufficient Security under the Penalty of* 100 l. *to be paid to our uſe, or every one of them in the Penalty of,* &c. *that he will not do, or procure to be done, any Damage or Ill to him the ſaid* A. *of his Body, or his Houſes by ſuch Burning. And if he ſhall refuſe to do this before you, (or thee) then that you (or ye) commit him the ſaid* E. *to our next Gaol, to be kept ſafely in the ſame, until he will do this freely: And when you (or ye) ſhall have taken that Security, that without Delay you (or ye) render us more certain, and certify us thereof in our Chancery under your or any of your Seals (or under thy Seal) diſtinctly and openly, ye (or you) remitting to us this Writ.* D

And for this Form of Writ, when the Writ is in the plural Number, the Writ is directed unto the Juſtices of Peace, or unto the Juſtices and Sheriff. And when it is in the ſingular Number, the Writ is directed unto the Sheriff only, or unto one Juſtice only. E

F And if the Huſband threaten his Wife to beat or to kill her, ſhe ſhall have this Writ,

A. *the Wife of* B. *hath beſought us that whereas ſhe is grievouſly and manifeſtly threatened by the aforeſaid* B. *of her Life, and maiming of her Members (as above until) you will anſwer to us, that by any Means you do compel*, &c. *that he ſhall well and honeſtly treat and govern the aforeſaid* A. *and that he ſhall not do, nor procure to be done any Damage or Evil to her of her Body, otherwiſe than what reaſonably belongs to her Huſband, for the Sake of Government and Chaſtiſement of his Wife lawfully*, &c.

G And if a Man be in Variance with other Men, and he is in Doubt that Damage or Hurt will come unto him, or his Servants or his Goods, by Reaſon of this Variance; then he ſhall have a ſpecial Writ againſt them directed unto the Sheriff, that he cauſe them to find Security that they do not damage or hurt the other in his Body, or his Servants, or other his Goods, in a certain Sum, *&c.* And if they will not find Security, that then he arreſt them and keep them in Priſon, until they will find Sureties: And that the Sheriff certify all that is done upon the ſame into the Chancery, upon Pain, *&c.* as it A appeareth by the Regiſter. And that Security ought to be taken by Recognizance, as it ſeemeth; *tamen quære.* And when a Man hath purchaſed ſuch Writ of *Supplicavit*, directed unto the Juſtices of Peace, or unto the Sheriff, or unto both, againſt any Man, then he againſt whom the Writ is ſued may come into the Chancery, and there find Sureties in the Chancery, that he will not do Hurt or Damage unto him that ſueth the Writ; and then upon that he ſhall have a Writ of *Superſedeas* out of the Chancery, directed unto the Juſtices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties, in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the Manner of Security that he hath found, and the Sum of Money in which they are bounden; commanding the Juſtices and Sheriff that they ſurceaſe to arreſt him, *&c.* or compel him to find Sureties, *&c.* and if they have arreſted him for that Cauſe, and for no other, that then they deliver him, *&c.* See the Form of the Writ in the Regiſter. And if the Party who ought to find Sureties, cannot come into the Chancery to find ſuch Surety, then his Friend may purchaſe a *Superſedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, *&c.* and that ſuch a one and ſuch a one are bounden for him in the Chancery in ſuch a Sum, that he ſhall keep the Peace according to the Writ of *Supplicavit:* And the Writ ſhall be directed unto the Juſtices of the Peace and Sheriff, that they or ſome of them take Surety of the Party himſelf, according to the Writ of *Supplicavit*, for to keep the Peace, *&c.* and that then they ſurceaſe to arreſt him; and if they have arreſted him for that Cauſe, that they then deliver him.

[81.]
Fitz. Juſt. de Peace 9.
Poſt. 238.

B And ſometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain Day; and if it be ſo, then if the Juſtices do not certify the Writ, nor the Recognizance, and the Security which is taken, the Party who ſued the *Supplicavit* ſhall have a Writ of *Certiorari* directed unto the Juſtices of Peace, to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is found, *&c.* and ſo the Party ſhall have ſuch *Certiorari*

rari unto the Juſtices of Peace, to certify the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery.

C And ſo if a Man demandeth Surety of the Peace in the County againſt any Man, he ſhall find Sureties in the County before the Juſtices of the Peace, &c. he who demandeth the Security may ſue a Writ of *Certiorari* directed unto the Juſtices of Peace, to remove the Surety of Peace, and the Recognizance taken thereupon; and to certify that Recognizance, and Security taken, under the Seals of the Juſtices of Peace, or one of them. And if the *Certiorari* be ſued upon a Writ of *Supplicavit*, then the *Certiorari* ſhall rehearſe the Writ of *Supplicavit*; and if it be ſued upon Surety demanded in the County without a *Supplicavit* ſued, then the Form of the Writ of *Certiorari* is ſuch:

The King to the Keepers of his Peace in the County of L. *and to every one of them, greeting. We willing for certain Cauſes to be certified of the Tenor of a certain Security of the Peace before* R. B. *and his Companions, Keepers of our Peace, and our Juſtices aſſigned to hear and determine divers Felonies, Treſpaſſes and Miſdemeanors in the County of* L. *of* R. *of* W. *for that he ſhall not do, nor procure to be done any Damage or Evil to* B. *of* F. *or to any of our People, which ſaid Security, of your Office taken, remains in your Power as it is ſaid, we command you, that without Delay ye render us more certain thereof in our Chancery, under your, or one of your Seals, diſtinctly and openly, remitting to us this Writ.*

D And when the Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* ſhall be directed unto the Sheriff only, to make Return of the Security found, if he have taken any Security, &c.

Ant. 80. Poſt. 82. Vid. 12 H. 7. 17 by Fineux, by the Common Law the Sheriff is Conſervator Pacis. Vid. Lamb. 110, 11. and now by the Statute of 33 H. 8. cap. 39. it is clear that Bond ſhall not be taken.

And if a Man find Sureties to keep the Peace againſt certain Perſons before the Sheriff, without any Writ of *Supplicavit* ſued by him who demandeth Surety, and without the Writ uſed of ancient Form; then the Party who demanded the Surety may have a *Certiorari* unto the Sheriff to certify the Security taken by him into the Chancery, &c. without making Mention in the *Certiorari* of any Writ ſued forth to cauſe the Sheriff to take ſuch Security; and by that *Certiorari* it ſeemeth, that the Sheriff *ex officio* may cauſe the Party to find Surety to keep the Peace, if any one pray the Sheriff to have ſuch Surety, and that the Sheriff bind them by Recognizance, and that he certify the ſame into the Chancery by the *Certiorari*: For if he certify an Obligation taken for Security, that Certificate cannot make the Bond to be a Thing upon Record, and the Party cannot be bounden unto the King but by Matter of Record, or unleſs that he Will come into the Court, and confeſs the ſame to be his Deed, and pray to have the ſame enrolled. And it ſeemeth that the Law is ſuch, becauſe that by the Common Law the Sheriff is Conſervator of the Peace, and hath the Keeping and the Cuſtody of the County for the Time that he is Sheriff; and the ſame appeareth by his Commiſſion and Letters Patent which he hath, the Words of whoſe Patents are ſuch:

Rex, &c. *Commiſimus vobis Cuſtodiam*, &c. and by that he takes his Authority, the which is a Matter of Record, as the Commiſſion which was

made to them who ſhall be Juſtices of the Peace, the which Commiſſion,
giveth them Authority to hear, determine and enquire of all thoſe Things
which are done againſt the Peace. And by Reaſon of that Commiſſion they
have Power to bind Men by Recognizance to keep the Peace, upon Complaint made unto them by any Perſon; and yet there is not expreſs Authority
given them by the Commiſſion to take that Recognizance; but it followeth,
that becauſe they have Authority to cauſe Men for to keep the Peace, and to [82.]
hear and determine Offences againſt the Peace, they have Power to bind Men Vide 7 H. 4.
by Recognizance ſo to do; for every Thing which they have done by Virtue 34. ac.
of their Commiſſion ought to be taken as a Matter of Record. And by the Crompt. 125.
ſame Reaſon the Sheriff, becauſe that his Patent is of Record, and he is
Conſervator of the Peace in every Place, every Obligation which he taketh
for to keep the Peace ſhall be in Law taken for a Recognizance, and eſpecially when it is certified in the Chancery by *Certiorari:* But yet all the Pleas
that are holden before him in the County are not of Record, nor Pleas holden
before him in the County by Writ of *Juſticies* are not taken as Matters of
Record; for theſe Pleas are holden before by Reaſon of the Courts which he
hath by Reaſon of his Office, as the County and Hundred Court, *&c.* But
the Leets and Torns which are for the Commonwealth, as for keeping of Bro. Leet 39.
the Peace, theſe are Courts of Record, and by Conſequence for keeping of
the Peace the Sheriff is Judge of Record, and may take Recognizance for
the keeping of the Peace *ex officio*; but if he ſo do, and take Recognizance Bro. Leet 29.
upon a Writ of *Supplicavit*, or other Writ directed unto him to take Sureties 9 Ed. 4. 31.
for keeping of the Peace, it is the ſtronger; but give Credit to better Reaſon,
and therefore *quære* thereof.

Writ de (*a*) Auxilio ad Filium ſuum Militem faciend' vel ad Filiam maritand'.

A THE Form of the Writ is ſuch: *The King to the Sheriff*, &c. *We command you that juſtly*, &c. *you cauſe* A. *to have reaſonable Aid of his Knights and Freeholders in your Bailiwick to make his eldeſt Son a Knight*, *or to marry his eldeſt Daughter*, *according to the Form of the Statute thereupon provided by the Common Council of our Kingdom of* England. *Witneſs*, &c.

B And a Man ſhall not have this Writ before that his Son hath accompliſhed the Age of fifteen Years, nor for to marry his Daughter before ſhe be of the Age of ſeven Years, as appeareth by the Statute of *Weſt.* 1. *cap.* 35.

(*a*) A Tenant in Frankalmoign ſhall not pay Aid. See *Rot. Parl.* 8 *Ed.* 2. *Mem.* 23. *pro Abbatiſſa de Cadamo.*

C And he who holdeth his Lands by a Knight's Fee, ſhall pay twenty Shillings unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more.

And the Tenant who hath Lands of the yearly Value of twenty Pounds holden in Socage, he ſhall pay twenty Shillings unto the Lord to make his Son a Knight, or for to marry his Daughter.

And he who holdeth by Half a Knight's Fee ſhall pay ten Shillings, and he who holdeth Lands in Socage of the Value of ten Pounds by the Year ſhall pay ten Shillings. And ſo according unto the Rate of the Value of the Socage Land, and according unto the Quantity of a Knight's Fee, he ſhall pay his Aid, and that by the Statute before-mentioned.

D But this Aid, to make the Son a Knight, or to marry his Daughter, the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in Certainty. And the Lord may diſtrain his Tenants for this Aid, and avow for the ſame if he will; and he need not for to ſue this Writ unleſs he will. And this Writ is directed unto the Sheriff, and he may ſue an *Alias* E
and a *Pluries*, and an Attachment againſt the Sheriff, if he will not aſſiſt the Lord to diſtrain his Tenants for this Aid.

F And the King's Tenants in like Manner ſhall pay Aid unto the King to make his eldeſt Son a Knight, or for to marry his eldeſt Daughter, *&c. viz.* Every one who holdeth by a Knight's Fee twenty Shillings, and he who holdeth by Half a Knight's Fee ten Shillings, and ſo according to that Rate.

And in like Manner every one who holdeth of the King in Socage twenty Pounds Land ſhall pay twenty Shillings to make his eldeſt Son a Knight, or for to marry his eldeſt Daughter. And he who holdeth ten Pounds Land in Socage ſhall pay ten Shillings, and that is appointed by the Statute *de Proviſionibus*, *Anno* 25 *Ed.* 3. *cap.* 10. And the Statute ſetteth the Aid certain, becauſe that before the ſaid Statute, the King will diſtrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King ſhall have no more.

G And if the eldeſt Son dieth before he cometh to the Age of fifteen Years, or before the Lord hath levied the Aid to make him Knight, then the Lord ſhall have Aid for the younger Son, to make him Knight when he cometh to ſuch Age, and yet he is not *primogenitus filius*, as the Writ doth ſuppoſe, but he is the *Primogenitus* which is then alive, and that is ſufficient, for he ought to be Heir apparent. And ſo it is if the eldeſt Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldeſt which is then living, after ſhe is of the Age of ſeven Years.

H And by the Statute the Writ which ſhall be directed unto the Sheriff to levy ſuch Aid for the Lord, ſhall mention that the Son is of the Age of fifteen Years; and if it be for the Daughter, it ſhall mention ſhe is of the Age of ſeven Years, otherwiſe the Writ is not good. But that Form is not in the Regiſter, for it ſeemeth the Regiſter was made before the Statute of *Weſt.* 1. and therefore the Writ ought to be according as the Statute ordaineth it.

I And if the Lord have Aid to make his Son Knight, or to marry his Daughter, and dieth before he hath paid the ſame, then the Son or Daughter ſhall have an Action of Debt againſt the Father's Executors for the Money; and if the Executors have no Goods of the Lord, then the Daughter ſhall have an Action of Debt againſt the Father's Heir, for ſo much of the Money as ſhe wanteth of that which her Father had levied to marry his Daughter: And that is by the Statute of *Weſt.* 1. *cap.* 35. And he who holdeth by Grand Serjeanty or Petit Serjeanty, ſhall not pay Aid to make the Son a Knight or to marry the Daughter, as it appeareth *M.* 11 *H.* 4. 32. (*a*). [83.] See after 122. G.

A

B And if the Lord doth levy Aid for the Marriage of his Daughter, and afterwards marrieth her, then the Daughter ſhall not have an Action of Debt againſt the Father's Executors for the Money levied, *&c.* But if the Daughter be not married in the Life-time of the Father, *&c.* by him, then the Action doth lie. And ſo it ſeemeth, that if the Son be not made Knight in the Life-time of the Father, that he ſhall have an Action againſt the Father's Executors for the Money levied to make him Knight.

Writ de Scutagio habendo.

C THIS Writ for Eſcuage lieth in Caſe where a Man holdeth Lands of the King by Knights Service, to which Homage, Fealty and Eſcuage is appendant: And he who holdeth of any Lord by ſuch Service, who holdeth over of the King by the like Services, when the King maketh a Voyage Royal in War againſt the *Scots*, or againſt the *Welſh* in proper Perſon, or by his Lieutenant, then he who holdeth by Knights Service ought to go in Perſon, or find a Man to go for him, in the War with the King, or his Deputy in that War, for forty Days at his own Coſt; and if he do not go, or not find a Man ſo to do for him, then he ſhall pay for that Default, and not doing of his Service, ſuch Sum of Money as ſhall be aſſeſſed by Parliament; for a Knight's Fee ſo much, and for Half a Knight's Fee ſo much; and ſo according to that Rate. And then he who holdeth by a whole Knight's Fee ſhall pay ſo much for Eſcuage, as the Parliament doth aſſeſs that a whole Knight's Fee ſhall pay, if he hath not done the Service; and he who holdeth by Half a Knight's Fee ſhall pay according to that Rate; and thoſe who have done their Services and gone in War, ſhall not pay any Thing. And that Sum of Money is called Eſcuage, *Servitium Scuti.* Vide Lit. 19 and 20.

D And if a Man holdeth of the King by Knights Service, and to go with him in his War, *&c.* then that Lord ſhall have Eſcuage of his Tenants who hold of him by the like Service; but the Sum which he ſhall have and levy ought to be aſſeſſed by Parliament (as afore is ſaid) before he diſtrain for the ſame. Vide 16 Eliz. Dyer 329. that he who holdeth by the Moiety of a Knight's Fee, holdeth by Knights Service, and ſo it ſhall be intended, if it be not found to the contrary.

(*a*) Nor any other Tenures but Chivalry and Socage, agreed by all the Juſtices, 10 *H.* 6. *Avowry* 267.

Litt. 35. And if a Man hold of any Lord, to guard his Caſtle in Time of War, or to blow a Horn in the Time of Invaſion of Enemies, the ſame is Knights Service: But it ſeemeth, that for thoſe Lands they ſhall not pay Eſcuage, if they do not their Services, but the Lord ſhall diſtrain them for not doing their Service, and ſhall have Recompence for the ſame. So that none ſhall pay Eſcuage, but only thoſe who hold by ſuch Services, to go into the War, or to find a Man to go, *&c.* *Tamen quære.* E

And if he who holdeth of the King by Knights Service to go with the King in War, do his Service, *&c.* then he ſhall have a Writ for him directed unto the Sheriff, to have Eſcuage of thoſe who hold of him by the like Service. And the Form of the Writ ſhall be ſuch: F

The King to the Sheriff, &c. *Becauſe our beloved and faithful* W. D. *had his Service with us by our Command, in our Army of* Scotland, *in the firſt Year of our Reign.* Or thus; *Was with us by our Command in our Army*, &c. *in the firſt Year*, &c. *as appears to us by the Rolls of* A. *our Conſtable of our Army aforeſaid.* Or thus; *Hath made Fine with us for his Service in our Army of* Scotland, *in the firſt Year*, &c. *as appears to us by the Certificate of our Treaſurer and Barons of our Exchequer ſent by our Command into our Chancery: We command you, that you cauſe the ſaid* W. D. *to have his Eſcuage of the Knights Fees, which they then held of him in your Bailiwick, to wit, eight Shillings each Shield for the Army aforeſaid; and this you in no wiſe omit. Witneſs*, &c.

And by that it appeareth, that if the King's Tenant goeth with the King's Lieutenant or his Deputy in War, that the Conſtable of the Hoſt ought to certify the ſame into the Chancery before the King's Tenant ſhall have a Writ to levy the Eſcuage of his Tenants; and if the King's Tenants do agree with the King for his going, *&c.* then the King ought to be certified thereof in the Chancery by the Treaſurer and Barons of the Exchequer, before that he ſhall have a Writ to levy the Eſcuage of his Tenants. G

And by that it appeareth, that if the King's Tenant do not go in the Voyage, nor agree with the King for that Voyage, that then he ſhall not have Eſcuage of the Tenants, nor diſtrain the Tenants for the ſame. H

And if a Man holdeth of the King by Socage, and others hold of him by Knights Service, and the King maketh a Voyage of War into *Scotland* and *Wales*; now it ſeemeth he ſhall not have Eſcuage of his Tenants, if he goeth not with the King in the Voyage; but if he goeth with the King or his Deputy, or agree with the King for that Voyage, then it ſeemeth he ſhall have Eſcuage of his Tenants, and ſhall have the aforeſaid Writ. And it is not material, whether he hold by Knights Service or in Socage. I

And if there be Lord, Meſne and Tenant, and each holdeth of the other by Knights Service, if the Tenant go into *Scotland* by the King's common Summons, then the Meſne ſhall not pay Eſcuage: *Quod conceditur per Cur' Trin.* 5 *H.* 5. K

[84.] Vide Title Avowry 215. See before 83. E. And if a Man holdeth Lands by ſuch Service, that he ſhall pay a Penny, or a Pair of Spurs, when Eſcuage runneth, *&c.* the ſame ſhall not properly be Eſcuage, as it appeareth in 15 *Ed.* 2. Title *Avowry* in the Abridgments. *Lit.* 26. A

And

B And *vide* 19 *R.* 2. that Garder of a Caſtle doth countervail Eſcuage, ſo that his Heir ſhall be therefore in Ward, and ſo of Grand Serjeanty; and yet it ſeemeth they ſhall not pay Eſcuage. *Quod vide* in Title *Gard*, *ibid.* 24, 36.

C And in Title *Quare impedit*, in the Abridgments, that Eſcuage certain doth not make Knights Service. *Hil.* 5. 3.

D And if there be Lord, and many ſeveral Meſnes and Tenants, and each holdeth by ſeveral Knights Service, if the Tenant Paravail of the Land doth the Services, and goeth with the King in War, *&c.* the ſame ſhall excuſe all the other Meſnes; for for one Land but one Service can be demanded, *viz.* to go, or to find a Man to go, *&c.* and ſo the Meſne Paramount here is excuſed, becauſe that the Service is done by the Tenant, *&c.*

E And when the King will levy Eſcuage of his Tenants, he uſeth to grant a Commiſſion to certain Perſons. And the Form of the Commiſſion is ſuch:

The King to his beloved, &c. *We have aſſigned you to levy and collect our Eſcuage of our Army of* Scotland, *in the firſt Year of our Reign, in the County of* K. *as well within Liberties as without, of the Knights Fees which they then held of us in Chief, or of the Eſcheats and Honours then being in our Hand, or of the Purchaſe of our Anceſtors or of us, as of the Knights Fees which are held of Archbiſhopricks, Biſhopricks, Abbies, Priories, or other Dignities or Offices Eccleſiaſtical whatſoever which were then in our Hand, and of the Inheritances of Heirs within Age, and being in our Cuſtody; to wit, forty Shillings of every Fee for the Army aforeſaid; ſo that you may have all the Monies thence coming, with all Particulars, at our Exchequer as ſoon as you can, to be paid to us there. And becauſe many of the Fees aforeſaid have come to the Hands of divers Perſons, as well in the Times of our Anceſtors as in ours, to wit, ſome by hereditary Deſcent, as well in Parcels as in other Manner, and ſome by Alienations thereof diverſely made, we aſſign you to inquire by the Oath of honeſt and lawful Men of every Hundred in the County aforeſaid, as well of Knights girt with a Sword as of others, by whom the Truth of the Matter may be better known, who held Knights Fees, or any Part of the ſame Fees in the ſame County in the Time aforeſaid, as of our Crown of* England, *or of the Purchaſe of our Anceſtors and us, and of the Archbiſhopricks, Biſhopricks, Abbies, Priories, and other Dignities and Offices before ſaid, and alſo of the Inheritances of the Heirs aforeſaid, then being within Age, and how many Fees, and what Parts of a Fee, every ſuch Tenant then held, and in what Towns diſtinctly, and who were Anceſtors of them who held by hereditary Deſcent, and who in other Manner, and who alſo were the Heirs within Age and in our Cuſtody, and what Archbiſhopricks, Biſhopricks, Abbies and Priories, and other Dignities whatſoever or Offices (the Keeping of the Temporals whereof belongs to us) were vacant at that Time. And thereupon we command you, by the Faith wherein you are bound to us, firmly injoining that at certain Days,* &c. *you do and fulfil the Premiſſes in Manner aforeſaid, and the Inquiſitions upon the Premiſſes diſtinctly and openly made, which may make plain Mention of every Fee, and of the Names and Surnames of the Tenants ſome Time ſeverally holding them, while they were held whole, and of thoſe who afterwards ſucceſſively held them after Partitions of the ſame between Heirs Parceners, or by Alienations, as is afore ſaid, have at the Exchequer aforeſaid, about the Feaſt of*

Eaſter *next coming, under your Seals and the Seals of thoſe by whom they were made. We alſo command our Sheriff of the County aforeſaid, that at certain,* &c. *he cauſe to come,* &c. *ſo many and ſuch honeſt and lawful Men, as well Knights girt with the Sword, as others of his Bailiwick, as well within Liberties as without, by whom the Truth of the Matter may be better inquired and known, and that he do obey and attend upon you in the Premiſſes: We alſo command the Treaſurer and Barons of the Exchequer aforeſaid, that they ſpeedily ſend to you in Writing ſuch Fees as are found at the Exchequer aforeſaid touching the Lands and Tenements in the County aforeſaid, for Evidence and for the greater Expedition of the Premiſſes: In Teſtimony whereof,* &c. *Witneſs,* &c.

19 Ed. 2. Br. Tenures 68. Leſſee for Life may do Eſcuage. 6 Ed. 2. Gard 12. he ſhall have the Ward, becauſe it is a Profit; he ſhall have Eſcuage, becauſe it is a Suit real; by Wilbie. Scrope cont.

And a *Venire facias* ſhall be ſent unto the Sheriff cloſe upon this Commiſſion, and another Writ cloſe unto the Treaſurer and Barons, *&c. quod Foeda mittant, &c.*

And now it appeareth by this Commiſſion, that the King ſhall have Eſcuage F of the Tenants who hold of theſe Lands or Manors which the King hath in his Hands by reaſon of Ward, or by reaſon of the Vacancy of a Biſhoprick, *&c.* Or if he have an Eſtate for Years in the Seigniory, he ſhall have Eſcuage of the Tenants, *&c.*

And ſo ſhall another Lord have, if he have a Term for Years or for Life in the Seigniory, if he go in Voyage with the King in War into *Scotland, &c.* he ſhall have Eſcuage then of the Tenants which hold of him by Knights Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a Man for to defend him; and then if the Lord do not go into the War, the Tenant is excuſed.

[85.] *Writ* de Securitate inveniend' quod ſe non divertat ad Partes exteras, ſine Licentia Regis.

Vide 1 Eliz. Dyer 165.

BY the Common Law every Man may go out of the Realm (*a*) to merchandize, or on Pilgrimage, or for what other Cauſe he pleaſeth, without A the King's Leave; and he ſhall not be puniſhed for ſo doing; but becauſe that every Man is of Right for to defend (*a*) the King and his Realm, therefore the King at his Pleaſure by his Writ may command a Man, that he go not beyond the Seas, or out of the Realm, without Licence; and if he do

2 Co. 17. b.

(*a*) See *Dyer* 189. If one beyond Sea does not return at the King's Command under the Great or Privy Seal, his Lands and Goods ſhall be ſeized for the Contempt. And ſee the like in *Dyer* 176. where a Baron had Licence to go beyond Sea, to be void on a Condition which is afterwards broken. On a *Mandamus* to return by Letters under the Privy Seal, and a Refuſal certified by the Meſſenger into Chancery, and the Certificate ſent by *Mittimus* into the Exchequer, a Commiſſion ſhall iſſue to ſeize his Lands. And *Note*; It is there held, 1. That the Licence is not countermandable within the Term. 2. That the Certificate of the Contempt is not traverſable, becauſe not triable *per Pays*. *Note* alſo; The King has only the Profits of the Lands, and therefore obſerve well the Statute 13 *Eliz. c.* 3. *Dyer* 375.

the contrary, he ſhall be puniſhed for diſobeying the King's Command. And it ſeemeth that this Command may be made by the King's Writ under the Great Seal, and alſo under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take Notice of every of the King's Seals in ſuch Caſe, as well as of the Great Seal.

B And there are two Manners or Forms of ſuch Writs; one is directed unto the Party, and the other unto the Sheriff, commanding him that he cauſe the Party to find Security that he ſhall not go out of the Realm without the King's Licence. And the firſt is ſuch:

The King to I. *of* B. *greeting: Becauſe we are given to underſtand, that you deſign to go out of the Way toward foreign Parts, and intend to proſecute there many Things prejudicial to us and to our Crown, in Contempt and Prejudice of us, and contrary to our Proclamations and Inhibitions thereupon often made: We, willing to oppoſe ſuch Contempt and Prejudice, ſtrictly* (*a*) *forbid you, under the Peril that may fall thereon, that in any wiſe you go not out of the Way towards foreign Parts without our ſpecial Licence, nor attempt or cauſe to be attempted any Thing to be proſecuted there, which may in any Manner be able to prevail to the Prejudice of us or of our ſaid Crown, neither ſend any Perſon there for this Purpoſe. Witneſs*, &c.

C And alſo the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the (*b*) Realm, without Licence, and that without ſending any Writ or Commandment unto his Subject; for perhaps he cannot find his Subject, or know where he is, and therefore the King's Proclamation is ſufficient in itſelf. And if the Subject do contrary thereunto, it is a Contempt, and for ſo doing he ſhall be fined to the King. 12 & 13 Eliz. Dyer 296. ac.

D The other Form of the Writ directed unto the Sheriff is ſuch:

The King to the Sheriff, &c. *Becauſe we are given to underſtand that* A. B. *Clerk, purpoſeth to go over towards foreign Parts to proſecute there many Things prejudicial and hurtful to us and many of our People: We, willing to reſiſt his Malice in this Behalf, command you, firmly enjoining that you cauſe the aforeſaid* A. B. *to come corporally before you, and by what Means you can compel him to find ſufficient Manucaptors who will bail him, under a certain Penalty to be reaſonably impoſed on them by you, for which you will anſwer to us.* Or thus; *And him the ſaid* A. B. *to find ſufficient Security, under the Penalty of one hundred Pounds, to be paid to our Uſe, or every one of them in the Penalty of*, &c. *that he (go not out of the Way, or) turn himſelf towards foreign Parts without our ſpecial Licence, nor ſhall preſume to proſecute, or cauſe to be attempted to be proſecuted, any Thing whatſoever there, which may be able to prevail to the Contempt of us, or to the Prejudice or Damage of our People, neither ſend any Perſon or Perſons there for this Purpoſe. And if he ſhall refuſe to do this before you, that*

(*a*) See ſeveral ancient Prohibitions *De non transfretando, &c.* Rot. Clauſ. 10 H. 3. m. 27. dorſo. Clauſ. 11 H. 3. m. 25. dorſo. Clauſ. 2 Ed. 3. m. 5. dorſo. *Et Nota* Clauſ. 3 Ed. 3. m. 36. dorſo, *apponitur Portus de Dover tantum.*

(*b*) See *Dyer* 165. *& Rot. Clauſ.* 25 *Ed.* 1. *m.* 25. *dorſo. Lib. Parl.* 204. And note *Dyer* 296. accordant. But till ſuch Proclamation made or Writ iſſued, it is no Contempt for any Perſon to go beyond Sea, although he intends to live there out of his due Obedience: For his Purpoſe or Intent is not triable. See the Statute of 5 *R.* 2. *c.* 2. repealed by Stat. 4 *Jac.* 1. *c.* 1.

then you do commit him the ſaid A. *to our next Gaol, to be kept ſafely in the ſame until he will freely do this; and when you ſhall have ſo taken that Security, you thereupon without Delay ſhall render us more certain, or ſhall without Delay certify us in our Chancery under your Seal diſtinctly and openly, remitting to us this Writ. Witneſs,* &c.

And this Writ may be directed unto Juſtices of the Peace, or unto the Sheriff, or unto both; and the Form may be as the Writ of *Supplicavit*, which is directed unto the Juſtices of the Peace, and unto the Sheriff, to cauſe him to find Sureties, *&c.* E

And every one, upon a Surmiſe made unto the Chancellor, may ſue forth this Writ for the King; and then the Party againſt whom it is ſued may come into the Chancery, and obtain Licence by Letters Patent or by Letters under the Privy Seal or Privy Signet; and the Licences are good, although they be not under the Great Seal, becauſe thoſe Letters will excuſe his Contempt. And ſuch Licences are called (*a*) Paſſports. And now by the Statute of 5 *R.* 2. *c.* 2. it is ordained, That no Perſon paſs out of the Realm without the King's Leave, but thoſe who are excepted in the Statute, and therefore ſee the Statute. F

Repealed per 4 Jac. 1. c. 1.

Writ of Treſpaſs.

THERE are two Manners of Writs of Treſpaſs: One is of a Treſpaſs which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but ſhall be determined in the County before the Sheriff; and in this Writ he ſhall not ſay, *Quare vi & armis, &c.* but the Form of the Writ is ſuch:

[86.] *The King to the Sheriff of* Lincolnſhire, *greeting:* W. *of* B. *hath complained unto us, that* C. *made an Aſſault upon him the ſaid* W. *at* N. *and beat, wounded and ill treated him, and other enormous Things to him did, to the no ſmall Damage and Grievance of him the ſaid* W. *And therefore we command you, that you hear* (*b*) *that Plaint, and afterwards juſtly cauſe him to be thereupon brought before you, that we may hear no more Clamour thereupon for want of Juſtice. Witneſs,* &c.

And by this Writ the Sheriff ſhall hear and determine that Treſpaſs, *&c.* by Inqueſt according to the Common Law; and this Writ is in Effect a Commiſſion unto him, and he may declare upon this Writ unto his Damage of twenty Pounds, or more.

And another Form of (*c*) Writ for Goods is ſuch: A

(*a*) See the Statute of *Magna Charta*, *c.* 30. That the Sea ſhall be open for Merchants. *Rot. Parl.* 18 *Ed.* 3. *nu.* 10. 22 *Ed.* 3. *nu.* 8. 25 *Ed.* 3. *nu.* 22.

(*b*) And yet the Sheriff is not Judge, but the Suitors, 6 *Co.* 11. yet ſee 21 *H.* 6. 35. Falſe Judgment was aſſigned, becauſe the Plaint was held before the Under-Sheriff, and not the Sheriff himſelf; and ſo *coram non Judice.*

(*c*) *Note*; The Writ, if for live Things, is *cepit & abduxit*; if for dead Things, it is *cepit & aſportavit.*

The King to the Sheriff, &c. W. *and* B. *Executors of the Teſtament of* C. *have complained unto us, that* E. *and* F. *took and carried away Goods and Chattels which were of him the ſaid* C. *to the Value of*, &c. *found under the Cuſtody of them the ſaid Executors at* N. *and other enormous Things to them did, to the hindering of the Execution of the aforeſaid Teſtament: And therefore*, &c. *that we may hear no more*, &c.

B And a Man may ſue other Writs of Treſpaſs upon the Caſe in the County before the Sheriff; and the Forms of the Writs are ſuch:

The King to the Sheriff, &c. A. *hath complained unto us, that whereas* B. *did deliver a hundred Sheep of his to the aforeſaid* A. *to ſtay or be kept for one Year upon his Land and Paſture at* N. *under certain Conditions, the aforeſaid* B. *took and carried away thoſe Sheep, being there upon the Land of him the ſaid* A. *within the Term aforeſaid, without the Licence and Will of the ſame* A. *and other*, &c. *to the Damage*, &c. By which Writ it appeareth, that he cannot take back the Cattle again, if the Plaintiff perform the Conditions.

C If a Man borrow a certain Sum of Money, and doth pawn Goods for the ſame, and he offereth the Money again unto the Party, and prayeth that the Pawn may be delivered back to him, and the other refuſe to do it, he ſhall have an Action of Treſpaſs upon the Caſe in the County before the Sheriff, to determine the Matter, *&c.*

D If a Man doth deliver unto another a Bull, or Oxen or (*a*) Cows, to make his Benefit of them for a certain Time upon Condition; if he, againſt the Will of him to whom they were delivered, take them back again within the Time, he ſhall have an Action of Treſpaſs againſt him directed unto the Sheriff, to determine that Cauſe.

E If a Man do diſtrain Kine which are with Calf, and impound them againſt Law for ſo long Time that they caſt their Calves, then he ſhall have a ſpecial Writ directed unto the Sheriff, rehearſing the ſpecial Matter, to end the ſame before the Sheriff in the County.

F And ſo if a Man have a Salt-pit by the Sea-coaſts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other Perſon throws down the Wall, by which the Sea-water overfloweth the Salt-pit, he ſhall have a ſpecial Writ directed unto the Sheriff, to end the Matter in the County.

G And ſo for every Manner of Treſpaſs done, a Man may (*b*) chuſe to have ſuch a Writ directed unto the Sheriff, to end the Matter before him in the County, or to ſue a Writ unto the Sheriff returnable in the Common Pleas or the King's Bench.

(*a*) *Note*; This ſpecial Writ, *Queſtus eſt nobis* A. *quod cum* B. *viginti oves, &c. liberaſſet, &c. præd'* B. *ſine Licentia prædicti* A. *oves illas infra Term' cepit & abduxit.* Regiſter 92. For it is clear the Bailor in ſuch Caſe cannot retake them within the Term. 2 *Ed.* 4. 13. 17 *Ed.* 2. 22. 1 *H.* 7. 15. And yet if he or his Donee takes them, the Bailee ſhall not have a general Writ of Treſpaſs; for then he ought to recover Damages to the Value of the Beaſts, againſt him who has the general Intereſt, which is not agreeable to Reaſon. See 11 *H.* 4. 24. adjudged; but againſt a Stranger the Bailee ſhall have a general Writ of Treſpaſs. See 11 *H* 4. 17. 21 *H.* 7. 15. and ſhall recover Damages to the Value of the Beaſts, becauſe he is chargeable to the Bailor in Detinue. But if after the Taking the Bailor releaſes to the Treſpaſſor, the Action *Vi & Armis* remains as before; and yet on the Matter ſhewn, he ſhall recover Damages only for the Compeſturing, *&c.*

(*b*) So that it ſeems in a *Juſticies* the Sheriff may proceed, though the Freehold comes in Debate. 6 *H.* 4. 2.

And if the Writ of Treſpaſs be returnable, then the Writ ſhall be of another Form, for then theſe Words *Vi & Armis* (*a*) ſhall be in the Writ; and if it want thoſe Words, the Writ ſhall abate, if they be not Writs of Treſpaſs upon the Caſe; which Writs of Treſpaſs ſhall not have theſe Words *Quare Vi & Armis* in the Writ, although they are returnable in the Common Pleas or King's Bench; and if they have the Words *Quare Vi & Armis* in the Writs, it ſhall be good Cauſe to abate the Writs. And the Form of a Writ returnable in the King's Bench is ſuch:

I *The King to the Sheriff*, &c. *If* A. *ſhall make you ſecure*, &c. *then put by Gages and ſafe Pledges* B. *that he be before us on the Morrow of All Souls, whereſoever we ſhall then be in* England. And if it be returnable in the Common Pleas, then thus: *Before our Juſtices at* Weſtminſter *on the Morrow of All Souls, to ſhew* (*b*) *wherefore with Force and Arms he made an Aſſault upon him the ſaid* A. *at* N. *and beat, wounded and ill treated him, ſo that his Life was deſpaired of, and other enormous Things to him did, to the great Damage of him the ſaid* A. *and* (*c*) *againſt our Peace: And have there the Names of the Pledges and this Writ. Witneſs*, &c.

K And if a Man do impriſon another, then the Form of the Writ of Treſpaſs is, *To ſhew wherefore with Force and Arms he made an Aſſault upon him the ſaid* A. *at* N. *and* (*d*) *wounded, impriſoned and ill treated him, and other*, &c.

And it is not material whether he be wounded or not, for the Form of the Writ is ſuch; but the Damages ſhall be increaſed for the ſame, if he do recover. And if he do impriſon him until he pay a Fine for his Deliverance, then the Form is, *Wherefore with Force and Arms he took, impriſoned and ill treated him the ſaid* A. *at* N. *and detained him in Priſon there* (*e*) *until he had made a Fine* (for ſo much) *with the ſaid* B. *for the having his Delivery, and other enormous Things to him did*, &c.

2 H. 4. 13. 7 Ed. 6. Dyer 70. 20 Ed. 3. 38. per Thorpe. 22 H. 6. 59. L And a Man may have one Writ of Treſpaſs for divers Treſpaſſes (*f*), &c. as for breaking of his Cloſe, cutting of his Trees, fiſhing in his Ponds, beating

(*a*) But the *Cauſa cauſans*, or immediate Cauſe and Conveyance to an Action on the Caſe, may be laid *Vi & Armis*, 12 H. 4. 3. 8 R. 2. Action ſur le Caſe, 29 Ed. 3. 20. 16 Ed. 4. 7. otherwiſe if it were only for Non-feaſance, 43 *Ed*. 3. 39. See 2 *Salk*. 636.

(*b*) *Note*; If the Writ be, *Simul cum aliis Maleſactorib' vi & armis, &c.* it ſhall abate; otherwiſe if it be *Simul cum aliis ignot'*. 8 H. 5. 5.

(*c*) *Note*; If he counts of a Treſpaſs done Part in another King's Time, and Part in the preſent King's Time, the Writ ſhall be, *Contra Pacem nup' Dom' Regis, &c. & Dom' Regis nunc, &c.* and it ſhall be good *reddendo ſingula ſingulis*. 21 H. 4. 15. And on a Writ *contra Pacem noſtram* only, he ſhall not recover Damages for a Treſpaſs done in the Time of another King. See 2 *Salk*. 640.

(*d*) *Note* well; A Juſtification for a Battery is no Juſtification for wounding, *&c.* 21 *H*. 6. 27.

(*e*) And if he juſtifies the Impriſonment, he need not anſwer to the Taking of the Fine, for it is but acceſſary; and therefore the Plaintiff ought to anſwer to the Juſtification of the Impriſonment, and not the Taking of the Fine. *Quære* 19 *Ed*. 3. 19.

Note; If one be taken in the County of *G*. and impriſoned till he makes Fine in the County of *W*. he may have this Writ in the County of *G*. 38 *Ed*. 3. 29.

(*f*) Yet for taking of a Hawk (reclaimed) he ſhall not have Treſpaſs, but Trover and Converſion. *Quære* 2 *Lev*. 201. 1 *Salk*. 667, *&c.* and the Count ought to be that he is reclaimed; and it is not ſufficient to ſay he was poſſeſſed of him as of his proper Goods. *Dyer* 306. Treſpaſs *de Bonis aſportatis* ought to alledge them to be *ſuis*. 13 H. 4. 11.

Note; In ſuch a Writ the Defendant pleads, That as to a Pheaſant, he found it in his own Ground, Beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks; and the Form of the Writ is, *Wherefore with Force and Arms he entered the Wood of him the ſaid* A. *at* N. *and took and carried away three young ones of his Hawks of ſo much Price, lately building Neſts in the ſame Wood; and other enormous Things*, &c.

And by this Writ it appeareth that the Property of the Hawks are in him who hath the Land by the Word *(ſuorum)* in the Writ. *Poſt*. 89. E.

M And for hunting in a Warren the Form is, *Wherefore he entered the Warren of him the ſaid* A. *at* N. *and therein, without his Licence and Will, chaſed, and took and carried away* (*a*) *Hares, Conies, Pheaſants and Partridges,* (*b*) &c. *Poſt*. 89. K. [87.] 34 H. 6. 38. 38 Ed. 3. 10.

A And if a Man hunt and take away another Man's Conies in his Cloſe which is no Warren, then the Form of the Writ is, *Wherefore*, &c. *he broke the Cloſe of him the ſaid* A. *at* N. *and therein without his Licence and Will, chaſed, and took and carried away ſo many Conies* (*c*) *of ſo much Price*, &c. 43 Ed. 3. 13. Bro. Property 37.

Ground, out of the Plaintiff's Warren, and he let his Faulcon flie at it, who followed it into the Warren, *&c.* and the Defendant followed his Hawk thither and took it; and it was ruled in a Manner by *Knivet*, That the Entring and Taking there was tortious. 38 *Ed*. 3. 10. Otherwiſe if the Killing and Taking had not been in the Warren. 12 *H*. 8. 10. See in Treſpaſs *Quare vi & armis in Warrenam ſuam intravit*. It is no Plea in Bar that the Freehold of the Soil is in the Defendant. See 3 *H*. 6. 13. 5 *H*. 7. 10. 17 *Ed*. 4. 6. 10 *H*. 7. 25. 11 *H*. 6. 34. *contra*.

Note this Diverſity. 1. If one comes into a Chaſe, Foreſt or Warren, and drive the Beaſts out of it, and he who drives out the Beaſts, or any other who has Notice of it kills the Beaſts, the Owner of the Foreſt, or his Officer may make freſh Purſuit, and thereon take or ſeize the dead Beaſt; for ſo long as he that killed it, had Notice, *&c.* the legal and local Property on the freſh Purſuit ſhall be ſaid to continue. 12 *H* 8. 10. adjudged. 2. If a Beaſt of Foreſt, Chaſe, *&c.* comes by Eſcape into my Land, I may kill him on my own Ground without foreſtalling him, and the ſame is not puniſhable. 12 *H*. 8. 12 21 *H*. 7. 30. provided it be not an Hart proclaimed. 7 *H*. 6. 36. 3. If Beaſts of Chaſe come by Eſcape into my Land, which is a convenient Diſtance from the Park, I may chaſe them with Greyhounds; and if the Greyhounds follow them towards the Park, and I keep them out, and the Greyhounds kill them, I may now take them, and am not puniſhable; otherwiſe if the Lands are not a convenient Diſtance. 18 *H*. 6. 22. 43 *Ed*. 3. 8.

Note; In Treſpaſs for entring into a Park, Warren, *&c.* it is no Plea to ſay it is no Park or Warren, but he muſt plead *Non cul'*, and give the Matter in Evidence. 10 *H*. 6. 16. 19 *H*. 8. 9. and therefore it is held clearly, that if one has a Warren, if he incloſe or impark without the King's Licence, and another hunts there, and he brings Treſpaſs *de Parco fracto*, the other may plead *Non cul'*, and give this Matter in Evidence; for none may have a Park without the King's Grant, or by Preſcription. *Note* alſo; The Plaintiff in this Writ does not make any Title to the Park in his Count, and therefore it is no Plea, that he had no Park by Preſcription or Licence. For how can Judgment be given on a Title where none is alledged. 18 *H*. 6. 21.

(*a*) *Note*; He ſhall not ſay *Lepores ſuos*, for he has not the real Property in them, but only a Property *Cauſa Warrenæ*, and only during the Time they are in the Warren. 3 *H*. 6. 55.

(*b*) And he ſhall ſhew in his Count the certain Quantity (or Number) of the Things, but he ſhall not ſay *pretio* (or of what Value) *Quære*, 30 *Ed*. 3. 10. for it is only (*Fugavit*) in this Writ

(*c*) *Note*; He ſhall not have Treſpaſs for the Conies only. 43 *Ed*. 3. 24.

3 H. 6. 55. ac. 5 H. 5. 2. 22 H. 6. 59. And by this Writ it appeareth, that he who hath the Land hath no Property in the Conies. And ſo of a Park; *Wherefore*, &c. (*a*) *he broke the Park of him the ſaid* A. *at* N. *and in it*, &c. *chaſed, and took and carried away the wild Beaſts.* Or thus; *Wherefore*, &c. *the Herbage of him the ſaid* A. *at* N. *lately growing, or the Corn of him the ſaid* A. *at* N. *lately growing, to the Value of ten Pounds, with certain Cattle he fed,* (*b*) *trod down and conſumed, and other*, &c. And he need not ſay in the Writ, *Wherefore he broke the Cloſe*, &c. *and the Herbage*, &c.

B And there is another Form of Writ of Treſpaſs, *Of digging the Soil and carrying away the Sea Coal.* C And another Form of Writ in the Regiſter, *Of his Horſe and Cattle arreſted without Cauſe, until he ſhall make a Fine.*

D And another Form, *Of his Houſe broke and Timber carried away.*

E And the Writ of Treſpaſs for Executors for Goods taken out of their Poſſeſſion, which is ſuch:

The King, &c. *If* A. *and* B. *Executors of the Teſtament of* C. *ſhall make you ſecure*, &c. *then put*, &c. *wherefore he took and carried away four Oxen, which were his the ſaid* C.*'s, of the Price of one hundred Shillings, found in the Cuſtody of them the ſaid Executors at* N. *and mowed the Corn of him the ſaid* C. *there growing, and took and carried away the ſame Corn, and other Goods and Chattels of the ſame* C. *found there in the Cuſtody of the ſame Executors, and other enormous Things to them did, to the delaying of the Execution of the Will aforeſaid, and againſt our Peace.*

F And if an Abbot and his Monks break the Seal of any Writing which they have made to another Perſon, the Party ſhall have a Writ of Treſpaſs againſt them in ſuch Form:

The King, &c. *If* A. *ſhall make you ſecure*, &c. *then put the Abbot of* C. *and* I. *and* D. *Co-Monks of the ſame Abbot*, &c. *wherefore*, &c. *a certain Writing of him the ſaid* A. *ſealed with the common Seal of the aforeſaid Houſe, by which the ſame Abbot and Convent were bound to the aforeſaid* A. *to find her in Victuals and Cloathing and in all her Neceſſaries, until the ſame Abbot and Convent ſhould marry her the ſaid* A. *to ſome Man having twenty Pounds of Land or Rent, found at* L. *they maliciouſly broke, and other*, &c.

G And alſo a Man may have a Writ of Treſpaſs for fiſhing in his ſeveral Piſcary, and for cutting of his Graſs, and for plowing of his Land, or for ſhearing of his Sheep, and all in one Writ.

And another Form of Writ for mowing of his Corn, and cutting of his Graſs, and felling of his Woods, and eating of his Corn and Paſtures, and all in one Writ.

H And alſo another Writ of Treſpaſs made unto a Woman before (*c*) Coverture, which is ſuch:

If

(*a*) *Note*; The Defendant ought to anſwer to the Breaking of the Park; as alſo to the Driving or Chaſing. 20 *H.* 6. 37. *Weſt.* 1. *c.* 20. and the Plaintiff ſhall recover for the entring into the Park, tho' the Defendant does not hunt, if he came for that or other ill Purpoſe. 5 *H.* 5. 1.

Note; The Plaintiff ſhall not have Judgment according to the Statute, if he does not bring a ſpecial Writ according to the Statute, and not a general Writ. 9 *H.* 6. 2. 47 *Ed.* 3. 10. adjudged.

(*b*) And *Note*; He has only a local Property, and it is void without a ſpecial Cuſtom to the contrary. If Beaſts of Chaſe or Foreſt go out of the Bounds of the Foreſt, he in whoſe Lands they are may kill them, except a Hart proclaimed. 7 *H.* 6. 36. 21 *H.* 7. 30. 43 *Ed.* 3. 8.

(*c*) *Note*; This Writ does not ſuppoſe a *dum*

ſola,

If A. *and* B. *his Wife ſhall make you ſecure*, &c. *then put*, &c. *wherefore*, &c. *he broke a certain Cheſt of her the ſaid* B. *found at* N. *and took and carried away a certain Writing obligatory found in the ſame Cheſt*, &c. *and other*, &c. *to the great Damage of them the ſaid* A. *and* B. *and againſt our Peace.*

I And another Writ in the Regiſter, *Of taking away a Ship*, *and carrying away the Chattels.*

K And another Writ, *Of Corn and Graſs of Vineyards fed*, &c. And another Writ, *Of Corn and Graſs of Coppices fed*, &c.

L And another Writ, *Of a Pool broken*, thus; *Wherefore*, &c. *he maliciouſly broke a certain Pool at* R. *by which the Water running from the ſame Pool overflowed the Fiſh-pond of him the ſaid* A. *inſomuch*, *that by the Courſe of that Water and the Inundation aforeſaid*, *the Fiſh then being in the ſame Fiſh-pond to the Value of one hundred Marks*, *iſſued thereout*; *and other*, &c.

By which it appeareth, that he ſhall have a Writ of Treſpaſs *Vi & Armis*, becauſe he cauſeth the Water to run out of his Pond, by which the Fiſh there go away.

M And there is another Writ, *De Equis abductis*, and Goods and Chattels unto the Value of five Pounds and one hundred Shillings, of Money in Money told, *ibidem invent' cepit*, *&c.*

N And there is another Writ of Treſpaſs againſt thoſe who lie near the Plaintiff's Houſe, and will not ſuffer his Servants to go into the Houſe, nor the Servants who are in the Houſe to come out thereof; and for taking and impounding his Cattle, and not ſuffering him to ſue a Replevin, *&c.* And the Form of the Writ is ſuch:

The King, &c. *If*, &c. *put*, &c. *wherefore with Force and Arms they beſet the Houſe of him the ſaid* A. *at* H. *and his Men and Servants*, *being out of the ſaid Houſe*, *would not permit to enter the ſame Houſe to do therein for the Service and Profit of him the ſaid* A. *and certain others his Men and Servants*, *being therein*, *would not permit to go out of the ſame Houſe to the Land of him the ſaid* A. *there to till it*, *by which one hundred Acres of Land of him the ſaid* A. *remained untilled*, *and the ſame* A. *for a long Time hath loſt the Profits of his Land aforeſaid*, *to the Value of twenty Pounds*, *and his Service of the ſame Men and Servants*; *and alſo impounded there the Beaſts of him the ſaid* A. *and detained them there impounded*, *not permitting them to be replevied to the ſame* A. *according to the Law and Cuſtom of our Kingdom*; *and other enormous Things to him did*, &c. [88.

A And there is another Writ of an Houſe broke, and Priſoner taken away, thus:

Wherefore with Force and Arms they broke the Houſe of him the ſaid A. *at* N. *in which the ſame* A. (*a*) *detained one* H. *of* C. *a* Scot, *taken by him in War as his Priſoner*, *until he ſhould be ſatisfied of one hundred Pounds*, *for which the ſame*

ſola, but the Count does, 21 *H.* 6. 30. 7 *H* 7. 2. *Dyer* 105. but if it be of a Battery of the Wife before the Coverture, the Bill or Writ ſhall be *dum ſola*. See 22 *Aſſ.* 87. and the Verdict may find all Guilty, where one only beats, *&c.*

(*a*) *Note*; If this Writ be *Bona & Catalla*, he may not count of one live Thing, as a Horſe, *&c.* but ought to have a ſpecial Writ, 10 *H.* 6. 22. yet ſhall not abate for Variance of the Count; *per Paſton*. See 21 *H.* 6. 29. If the Writ be *Bona & Catalla*, and he counts of Pikes or Tenches, Horſes or Cows, the Writ ſhall abate, for they ſhall be intended living: Therefore the Writ for theſe ought to be ſpecial, *viz. Equos*, *vaccas*, *&c.*

Note; Where the Writ was *de Bonis & Catallis*, it concluded *ad Valenciam*; as 3 *Ed. quos Pretii*, *&c.* 21 H. 6. 39. Dyer 121.

H.

H. *made his Ranſom with the aforeſaid* A. *for ſaving his Life, and took and carried away him the ſaid* H. *and other enormous Things*, &c.

2 & 3 P. & Ma. Dyer 121. B And note, That the Form of the Writ for a live Thing, as Horſes or Men, or ſuch like, is to ſay, *Ceperunt & abduxerunt*; and for a dead Thing, to ſay, *Ceperunt & aſportaver'*, *&c.*

C And there is another Writ of Treſpaſs; if a Man take another and impriſon him until he make Oath that he will not trouble nor impriſon him for a Treſpaſs done to him before, or impriſon him until he hath made unto him a Releaſe of all Actions.

D And if a Man taketh his Villain and puts him into the Stocks, and others come and break the Stocks, and let him out, he ſhall have an Action of Treſpaſs, and the Form is,

Wherefore when he the ſaid R. *took* S. *his Villain and Fugitive in his Manor at* K. *and there put him in the Stocks to chaſtiſe him, as it was lawful for him to do, becauſe he was not juſtifiable to him the ſaid* R. *the aforeſaid*, &c. *with Force and Arms broke the Stocks aforeſaid, and took and led away him the ſaid* S.

Poſt. 89. M. E There is another Form of Writ, thus: *Wherefore with Force and Arms*, &c. *he filled a certain Ditch in* L. *with Earth and Mud, that the Water iſſuing from the Ditch aforeſaid overflowed the Corn of him the ſaid* W. *being in Sheaves in his Barn there, by which his Corn aforeſaid, to the Value of one hundred Shillings, was putrified, and plucked up by the Roots his Trees there lately growing, to the Value of forty Shillings, and with certain Beaſts fed, trod down and conſumed his Corn there lately growing, to the Value of forty Shillings*, &c.

And by the firſt of theſe Writs appeareth, that that is an Action of Treſpaſs upon the Caſe, and the Reſidue a common Action of Treſpaſs.

F And if a Man draw Wine out of the Veſſels, and put Water in the ſame to fill them up again, he ſhall have an Action of Treſpaſs in this Form:

Wherefore with Force and Arms, &c. *he drew out ſixty Flagons of a certain Tun of Wine of him the ſaid* A. *of the Price of four Pounds, put in the Ship of the aforeſaid* I. *at* S. *to be brought from thence to* S. *and filled up that Tun with Sea Water, ſo that the Reſidue of the Wine aforeſaid became corrupted, and wholly periſhed; and other*, &c.

3 H. 4. 12. b. & infra H. G And another Writ of the Fiſh of his Piſcary, and Herb fed up, and Land digged, thus:

Wherefore with Force, &c. *he fiſhed in the free Fiſhery of him the ſaid* A. *at* N. *and cut down his Graſs there lately growing, and likewiſe dug in his Land there, and took and carried away the Earth there caſt up, and the aforeſaid Graſs and the Fiſh* (a) *of the Fiſhery aforeſaid, to the Value of one hundred Shillings*, &c.

7 H. 7. 13. ſupra G. H (b) And it appeareth here, that there are divers Manners of Forms of fiſhing in his Fiſh-pool: One Writ is, *Wherefore*, &c. *he fiſhed in his Fiſheries*, &c.

(a) Though the Writ be *Piſcem*, he may count of more Fiſhes; for the Word *Piſcis* is *Nomen collectivum*. 4 H. 6. 11.

(b) *Note*; In Treſpaſs for fiſhing in his ſeveral Fiſhery, *liberum Tenementum* is a good Plea, but he cannot conclude Judgment *ſi Actio* without Title ſhewn. For in Treſpaſs the Thing itſelf is not in Demand, as it is in Aſſiſe, or *Quod permittat*. 24 H. 6. 43. 20 H. 6. 40. See 17 *Ed.* 4. 6. 18 *Ed.* 4. 4. 10 *H.* 7. 24, 27. and yet he cannot have a ſeveral Piſcary in another's Soil, as well as a free Piſcary by a ſpecial Title. 7 *H.* 7. 13. 20 *H.* 6. 4.

Alſo *Note*, That he who has *liberam Piſcariam* may have Treſpaſs againſt a Stranger; for he has more than Common of Piſcary. 17 *Ed.* 4. 7. 7 *H.* 7. 13.

Another Writ is, *Wherefore,* &c. *he fiſhed in the ſeveral Fiſhery of him the ſaid* A. *&c.* And the third Writ is as before, *Wherefore he fiſhed in the free Fiſhery of him the ſaid* A. *at* N. *&c.*

I And a Man ſhall have a Writ of Treſpaſs for breaking of his Houſe, and cutting of his Trees, and for fiſhing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plough-cattle, and impounding of them, and for taking of his Doves out of his Dove-houſe; and the Form is ſuch:

Supra 87. G 39 Ed. 3. 20.

Wherefore, &c. *he broke the Houſes of him the ſaid* A. *at* N. *and cut down his Trees there lately growing, and fiſhed in his Fiſh-ponds there, and took and carried away the Fiſh thereof and the Trees aforeſaid, and there took and impounded his Beaſts of his Plough, and detained them ſo long Time impounded, that forty Acres of Land of the ſame* A. *for a great while remained untilled, and took and carried away the Doves of his Dove-cote there, with Nets and other Engines, whereby the ſame* A. *wholly loſt a Flight of his Dove-cote; and other,* &c.

And by this Writ it (*a*) appeareth, that a Man ſhall have an Action of Treſpaſs for taking of his Plough-cattle, and ſhall join the ſame in a common Action of Treſpaſs with other Treſpaſſes; and alſo that he ſhall have an Action for taking of his Doves.

C. 5. Part 128. in Treſpaſs the Defendant as to one Thing juſtified, and pleaded Not guilty to another, and the Jury found one Iſſue, and taxed Damages intirely. 22 Eliz. Dyer 369. 2 & 3 Ma. Dyer 221. 17 Ed. 3. ac.

K And a Man may have a Writ *Of his Cloſe broke, and of his Corn in Sheaves, and Hay, to the Value of one hundred Shillings, fed,* &c. or of eating of his Hay only, *&c.* Or, *Wherefore he mowed down and carried away the Reed of him the ſaid* R. *to the Value of one hundred Shillings, at* N. *lately growing.*

L Another, *Wherefore,* &c. *he broke the Mill-ſtone of him the ſaid Prior, of the Price of forty Shillings, at* N. *and the Goods and Chattels,* &c.

M And by this it appeareth, that if it be a live Thing or dead Thing for which the Action is brought, it is not material whether he ſay, *of the Price,* &c. or *to the Value,* &c. (*b*).

And another Writ of a Mill-pool broken in two Towns, thus:

Wherefore, &c. *he broke the Mill-pool of him the ſaid* R. *of* B. *at* R. *and* S. *by which the Water of the ſame Pool wholly run out, and he the ſaid* R. *loſt the Profit of his Mill aforeſaid, to the Value of one hundred Shillings; and his Goods and Chattels,* &c.

N And another Writ, *Of Houſes and Chattels burnt.*

O And another Writ, *Of his Sheep ſhorn and the Wool carried away.*

(*a*) See *per Hankſ.* If a Writ of Treſpaſs be *ad valenc',* *&c.* the Plaintiff ſhall recover the Value of the Goods, and the Jury ſhall be charged to inquire of the Value; and therefore it is a good Plea to ſay that the Plaintiff is poſſeſſed of the Beaſts; for the Writ ought to be, that the Defendant had taken and detained his Beaſts *Sine Cauſa rationabili, per Hankſ. ſed Culp' contr',* and that it ſhall be given in Evidence, that the Plaintiff is ſeiſed of the Goods in Mitigation of the Damages, 11 *H.* 4. 24, 25. and agreeing with this Opinion of *Culp.* that the Plaintiff ſhall have a general Writ, and that it ſhall not abate, but the Matter be given in Evidence. See 1 *H.* 6. 7. 12 *H.* 6. 6. 19 *H.* 6. 34. 21 *H.* 6. 15. 7 *H.* 6. 27. Treſpaſs *quare quinque Boves apud* D. *cepit & fugavit & imparcavit, &c. per quod tres de bovib' pretii* 5 l. *fame interierunt, & alii deteriorati ſunt ad dampnum, &c.* and it was abated, becauſe the Value of all the Beaſts was not ſhewn; *contra* if it had been *fugavit & imparcavit,* but not *cepit.* 1 *H.* 5. 3.

(*b*) See 2 *H.* 4. 11. *per Markham.*

[89.] And another for taking him and impriſoning him in one Place, and from thence carrying of him to Priſon in another Place, and there detaining him in Priſon.

A And another Writ for taking of his Sheep in one Place, and impounding of them in another Place, until he hath paid a Fine.

B And another Writ for breaking of his Sluices, in ſuch Manner: *Wherefore*, &c. *they broke the Sluice of the Mill-pool of him the ſaid Abbot, and his Park there at* S. *and in it, without Licence*, &c. *and* (*a*) *his Trees*, &c. *and in his ſeveral Fiſhery*, &c. *and took the Fiſh thereof and the Trees aforeſaid, to the Value of one hundred Shillings, and alſo the wild Beaſts of the ſaid Park.*

C Another Writ, *Wherefore with Force and Arms*, &c. *he broke the Sluices of him the ſaid* A *beyond the Ditch of* N. *for the Safety of his Lands at* C. *and cut the Timber thereof, to the Value of one hundred Shillings, into ſmall Pieces, ſo that by ſuch Breaking, the Lands and Meadows of him the ſaid* A. *were there overflowed, and the ſame* A. *wholly loſt the Profit of the Lands and Meadows aforeſaid, to the Value* 100 s. *and other*, &c.

D And another Writ: If a Man doth impriſon his Villain, and ſet him in the Stocks for ſome Offence, and another Man doth ſet him at large, the Lord ſhall have an Action of Treſpaſs for breaking up the Stocks, and for ſetting his Villain at large.

See 91. K. E And another Writ: If a Man be riding on the Way, and another Man ſtriketh his Horſe, by which the Rider falleth and is hurt; he which is caſt off his Horſe ſhall have Treſpaſs againſt the other.

F And another Writ for putting out another Man's Eye, thus: *Wherefore with Force and Arms he thruſt out the right Eye of him the ſaid* W. *at* N. *and other*, &c.

G And the Maſter of an Hoſpital ſhall have an Action of Treſpaſs for taking of Goods in the Time of his Predeceſſor; and the Form of the Writ is ſuch: *The King*, &c. *If* W. *of* S. *Maſter of the Hoſpital of Saint* Michael *of* C. *ſhall make you ſecure*, &c. *then put*, &c. *wherefore with Force and Arms he took and carried away the Goods* (*b*) *and Chattels of the aforeſaid Hoſpital, to the Value of one hundred Shillings, found at* R. *in the Time of* I. *of* C. *lately Maſter of the Hoſpital aforeſaid, Predeceſſor of the aforeſaid Maſter.*

H And the like Writ for an Abbot or Prior, and in the End of the Writ he ſhall ſay, *To the Prejudice of the Houſe and Church of him the ſaid Abbot.* And ſo it ſeemeth it ſhall be in the End of the Writ for an Hoſpital.

And another Writ for an Abbot, thus: *Wherefore with Force and Arms he broke the Gates and Houſes of the Houſe and Church of him the ſaid Abbot at* L. *and with certain Beaſts fed, trod down and conſumed the Corn of the Houſe and Church aforeſaid, in the Time of the Abbot aforeſaid, there growing, to the Value*, &c. *and took*, &c. *the Goods and Chattels of the ſame Houſe and Church in the Time aforeſaid, to the Value of one hundred Shillings, there found*; *and other*, &c. (*c*).

(*a*) See for Juſtification in Treſpaſs *de arborib' ſuis*, 13 *H.* 7. 9. And note; If he juſtifies the Cutting, he ſhall not anſwer the Carrying away; for if he did not cut them, the Writ ought to be *Quare bona & catalla cepit.* 33 H. 6. 12. Kelw. 114. 10 H. 4. 1. 5 H. 5, 8.

(*b*) Note *Prædict' hoſpitalis*, but not ſo *de Cuſtod' & Eccleſia.* 9 H. 6. 25. *Vel præd'* I. or if the Predeceſſor himſelf had brought the Writ, it ſhould be *bona & catalla ipſius* I. See accordant 18 *Ed.* 2. 3. 47 *Ed.* 3. 23. 9 *Ed.* 4. 33 and ſo of a Replevin brought at Common Law 16 *Ed.* 3. *Treſpaſs* 211. And ſo it is of Waſte *ad exhæredationem Domus & Eccleſiæ de* B. See 7 *H.* 6. 18.

(*c*) But when ſuch Treſpaſs is done to the Predeceſſor. See 13 *Ed.* 4. 16. 4 *Ed.* 4. 8. *contra* 2 *H.* 4. 4. the Writ being *arbores Domus & Eccleſiæ de* B. See 18 *Ed.* 2. *Treſpaſs* 237.

I And another Writ for a Treſpaſs done in the Time of Vacation of an Abby or Hoſpital; *Wherefore with Force and Arms he took and carried away the Goods and Chattels of the Houſe and Church of the Abbot of* C. (*a*) *in the Time of the Vacation of the Abby aforeſaid, to the Value of one hundred Shillings, ſound at* L. &c. *and other*, &c. *to the Prejudice*, &c. *and againſt the Peace*, &c.

K And another Writ of Treſpaſs; *Wherefore with Force and Arms he entered the Warren of him the ſaid* A. *at* C. *and chaſed in it*, &c. *and likewiſe entered his Wood there, and three young ones of his Hawks neſtling in the ſame Wood, of the Price of twenty Shillings, and other his Goods and Chattels, to the Value of one hundred Shillings, there found, and alſo Hares, Conies and Partridges in the Warren took*, &c. Ant. 86. S.

L (*b*) And another Writ of Treſpaſs; *Wherefore with Force and Arms he chaſed one hundred Sheep of him the ſaid* A. *found at* T. *with certain Dogs, inciting thoſe Dogs to bite the Sheep aforeſaid, inſomuch that by the chaſing and biting of the Dogs aforeſaid the ſaid Sheep were much worſe, and a great Part of the Births of thoſe Sheep made abortive, and made an Aſſault upon* T. *his Servant there*, &c. *by which*, &c.

And another Writ, *Of Swine chaſed, ſo that they died*, &c.

And if a Man do incite or procure his Dog to bite any Man, he ſhall have an Action of Treſpaſs for the ſame.

M And if a Man fill a Ditch with Mud and Earth, which had uſed to be a Watercourſe, for which another Man's Land is drowned, *&c.* he ſhall have a Writ of Treſpaſs; *Wherefore with Force and Arms he filled a certain Ditch at* T. *through which a certain Water runs there, with Earth and Mud, inſomuch that the Water being hindered of its ancient Courſe, overflowed twenty Acres of Land of him the ſaid* A. *there ſowed with divers Kinds of Grain, by which he the ſaid* A. *wholly loſt the Profit of his Land aforeſaid*; *and other Wrongs*, &c. Ant. 88. D.

N And if a Man diſtrain Cattle, and carrieth them into unknown Places, the Party ſhall have an Action of Treſpaſs *Quare vi & armis* for the diſtraining of them; and the Writ is ſuch:

Wherefore with Force and Arms he took the Beaſts of him the ſaid A. *at* N. *and chaſed them to Places unknown, ſo that thoſe Beaſts could not be found to be replevied to him the ſaid* A. *according to the Law and Cuſtom of our Realm*; *and other*, &c.

O There are divers Writs of Treſpaſs founded upon Statutes, whereof ſome do follow (*c*).

The King, &c. *If* A. *&c. then attach* B. *&c. that he be before us*, &c. *to anſwer the aforeſaid* A. *wherefore with Force and Arms he raviſhed* C. *the Wife of the aforeſaid* A. *at* N. *and carried her away, with the Goods and Chattels of the aforeſaid* A. *to the Value of one hundred Marks, and yet detains her from him*; *and other*, &c. *to the great Damage*, &c. (*d*) *againſt the Form of the Statute in ſuch Caſe provided*, &c. *Witneſs*, &c.

(*a*) See when on a Vacation by Depoſition, in the Time of *Ed.* 1. *Treſpaſs* 242. the Biſhop ſhall not puniſh Treſpaſs on the Temporalties, but the King. 38 *Ed.* 3. 30. *Vide* accordant 39 *Ed* 3. 19.

(*b*) If my Dog kills your Sheep, and I freſhly after the Fact tender you the Dog you are without Remedy. 7 *Ed.* 3. *Barr.* 293.

(*c*) *Note*; The Action is to commence with an Attachment, and not with a *Pone per vadios.* 14 H. 6. 2. See the Stat. of *Weſt.* 2. *c.* 38.

(*d*) *Note*; The Party ſhall not have the Puniſhment enjoined by the Stat. but where he is ſued by a Writ that makes mention of the Statute. 9 *H.* 6. 2. *Vide infra* A.

Ant. 69. I. Another Writ; *Wherefore with Force and Arms he took the Beaſts of him the* F *ſaid* A. *at* N. *in your County, and chaſed them from that County into the County of* Kent, *and impounded and there detained them impounded, contrary to the Law* (*a*) *and Cuſtom of our Realm and againſt our Peace: And have there,* &c.

[90.] Another Writ of Treſpaſs, (*b*) that Diſtreſſes, *&c.* be not out of the Fee, or A in the King's Way, thus: *If* A. *ſhall make you ſecure,* &c. *then put,* &c. *that he be,* &c. *before,* &c. *to ſhew wherefore, ſeeing that it is provided by the Common Council of our Realm, that none may make Diſtreſſes out of his Fee for any Cauſe whatſoever, neither in the* (*c*) *King's Way or common Street, except thoſe having ſpecial Authority for this Purpoſe of us and our Miniſters, the aforeſaid* B. *who is not our Miniſter, as it is ſaid, out of his Fee at* N. *the Beaſts of him the ſaid* A. *contrary to the Form of the Proviſion aforeſaid,* &c. *And have,* &c. Otherwiſe in the Highway, thus: *The Beaſts or* (*d*) *Goods and Chattels of him the ſaid* A. *in the King's Way took and impounded, and yet* (*e*) *detains them impounded againſt the Law and Cuſtom of our Realm,* &c. *and againſt our Peace.* Or thus: *And detained the Beaſts aforeſaid a long Time impounded, againſt the Law,* &c. *and againſt our Peace,* &c. *And have,* &c. *And in the mean time cauſe thoſe Beaſts to be delivered to him the ſaid* A. *Witneſs,* &c.

Another Writ of Treſpaſs againſt him who diſtraineth a Man by (*f*) his B Plough-cattle, or by his Sheep: *To ſhew wherefore, ſeeing that it is appointed for the common Profit of our Realm, that no Man of the ſame Realm may be diſtrained by the Beaſts of his Plough, or by his Sheep, for our or another's Debt, or on other Occaſion whatſoever, by our or another's Bailiffs or Miniſters, ſo long as he hath other Beaſts by which reaſonable Diſtreſs may be made upon him for levying thoſe Debts, except only thoſe Beaſts which are found doing Damage to any one happen to be impounded according to the Law and Cuſtom of our Realm; the aforeſaid* W. (*g*) *took and impounded the Sheep of the aforeſaid* A. *at* N. *or the Beaſts of*

(*a*) *Note*; This Writ lies againſt a Lord. 3 *Ed.* 3. 5. adjudged. But if *A.* holds an Acre, *&c.* in one County of a Manor in another County, the Lord may diſtrain in the ſaid Acre, and carry the Diſtreſs into the other County. 1 *H.* 6. 3. *per Cur.* 22 *Ed.* 4. 11. *Quære,* 18 *H.* 7. *Kelw.* 50. 14 *Ed.* 3. *Barr.* 275.

Note; In Treſpaſs for a Diſtreſs taken and driven into another County againſt *A.* and *B.* *A.* pleads Not guilty, and *B.* ſays that he is Bailiff of *J. S.* of whom the Plaintiff holds, *&c.* And for Services arrear he diſtrained, and drove into another Place within the ſame County, without doing any Thing againſt the Peace, and tenders to aver his Plea. And reſolved, 1. That the Defendant here need not make an Avowry, for he ſhall not make a Return here, for the Writ does not command the Sheriff to make Deliverance. 2. That the Iſſue ſhall be tried in the County where the Taking was, and not where the Driving is ſuppoſed, for there they cannot take Conuſance, whether they were the ſame Beaſts that were taken in the other County. *P.* 13 *Ed.* 3.

(*b*) But note; The Party grieved ſhall not have Advantage of the Statute of *Marlb. c.* 35. except by a ſpecial Writ founded on the Statute, and not by a general Writ of Treſpaſs. 43 *Ed.* 3. 30. *Temp. Ed.* 1. *Avowry* 130. 11 *R.* 2. *Avowry* 87. 4 *H.* 6. 2. *per Bab. contr. Martyn,* 9 *H.* 6. 2. *Ratio* becauſe in a ſpecial Writ the Party makes a Fine to the King. 8 *Co.* 60. *Beecher.*

(*c*) One may diſtrain *in via Regia* for an Amercement in a Leet. *Temp. E.* 1. *Avowry* 232. 19 *Ed.* 2. *ibid.* 221, 225.

(*d*) Without ſaying *pretii* in the Writ, but it muſt be in the Count. 19 *Ed.* 3. *Brief* 842. *Note* the Reaſon, becauſe they are taken *nomine diſtrictionis*, and ſee there *contra pacem* omitted.

(*e*) See 39 *Ed.* 3. 20. *Detinuit quouſque Finem fecit,* held good.

(*f*) See this Writ lies where the Rent is arrear. *Temp. Ed* 1. *Avowry* 230.

(*g*) *Note*; The Writ lies between Lord and Tenant, and although the Tenant pays his Rent and has Deliverance, he ſhall have this Writ. 18 *Ed.* 2. *Action ſur Stat.* 35. And note; if at *of him the ſaid* A. *of his Plough at* N. *againſt the Form of the Statute aforeſaid, and yet detains them there impounded againſt the Law and Cuſtom*, &c. *and againſt the Peace*, &c. *And have*, &c. *And in the mean time cauſe thoſe Beaſts to be delivered to him the ſaid* A. *Witneſs*, &c.

And ſo note, that in this Writ of Treſpaſs the Sheriff ſhall make Deliverance unto the Party, as he ſhall do upon a Replevin: And if the Party hath the Beaſts delivered unto him before the Writ ſued, then this Clauſe, *Cauſe thoſe Beaſts in the mean time to be delivered to him the ſaid* A. ſhall not be in the Writ.

C Another Writ: If a Man doth take the Oxen or Carts of another, or other Things, as Barges or Ships to carry Goods, againſt the Will of the Owner, then he ſhall have ſuch Writ:

The King to the Sheriff, &c. *If*, &c. *put*, &c. *to ſhew wherefore, ſeeing that in the Statute lately made at* Weſtminſter, *amongſt other Things it is contained, that none take Horſes, Oxen, Wains, Carts, Ships and Boats for Carriage, againſt the Will of him whoſe Goods they are, the aforeſaid* B. *and* D. *with Force and Arms took, and for a long Time detained, a certain Cart and four Horſes for Carriage of the aforeſaid* A. *found at* N. *againſt the Will of him the ſaid* A. *and other Wrongs*, &c. *to the great Damage*, &c. *and contrary to the Form of the Statute aforeſaid, and againſt our Peace: And have there*, &c.

D Executors ſhall have ſuch Writ of Treſpaſs for Goods and Chattels taken in the Life of the Teſtator.

E And if a Man do diſtrain out of his Fee, he who is diſtrained ſhall have an Action of Treſpaſs againſt him; and in the End of the Writ there ſhall be this Clauſe, *And cauſe thoſe Beaſts in the mean time to be delivered to him the ſaid* A. *&c.* And by that Writ the Sheriff ſhall deliver the Cattle to the Party, as in a Replevin.

F If a Man caſt any Thing upon the Feet of another, by which he is hurt, he ſhall have an Action of Treſpaſs for the ſame.

G If a Man take a Canon or Monk out of the Monaſtery, the Abbot or Prior ſhall have an Action of Treſpaſs thereupon, thus:

Wherefore with Force and Arms he broke a certain Houſe within the Priory of B. *which is a Cell of the ſame Abbot, wherein Friar* I. *Canon of the ſame Abbot, was put for an Offence againſt the Rule of his Order, into which he fell, to be chaſtiſed according to the Rule of the ſaid Order, and took and led away the aforeſaid* I. *and other*, &c. Or thus: *Wherefore*, &c. *he broke the Cloſe of him the ſaid Abbot at* L. *and Friar* W. *of* L. *Canon*, &c. *who was detained in Priſon within the Cloſe aforeſaid, to be chaſtiſed according to the Rule of his Order, drew out and led away from the ſame Priſon; and other*, &c.

at the Time he takes the Diſtreſs, he cannot find other Diſtreſs, but only Sheep, *&c.* altho' he could (not) have diſtrained before the Diſtreſs is cognizable, (*viz.* If he hath a Seigniory, *&c.* and ſo cauſe to diſtrain) whereupon they were at Iſſue, whether he could find ſufficient Diſtreſs on the Tenements. 29 *Ed.* 3. 17. But note; The Count may be general as the Writ is, *viz. contra formam Statuti*, and need not alledge that *nulla alia rationabilis Diſtrictio inveniri potuit.* but that ſhall come on the other Side, and it is ſupplied by the *contra formam Statuti.* Dyer 312.

(*a*) And a Man ſhall have an Action of Treſpaſs for taking his Son and Heir, H
or his Daughter and Heir, and marrying her; and the Writ is ſuch:

12 H. 4. 16. *If* R. *ſhall make you ſecure*, &c. *then put*, &c. W. *and* B. *that they be*, &c. *wherefore with Force*, &c. *they raviſhed*, *married and led away* John *or* Joan (as the Caſe is) *Son or Daughter and Heir of the aforeſaid* R. *found at* I. *and other*, &c. (*b*).

And the King ſhall have an Action of Treſpaſs for taking of his Goods; I
and the Writ is ſuch:

Wherefore with Force and Arms our Goods and Chattels, *to the Value of*, &c. *and other Injuries there committed*, *in Contempt and to the great Damage of us*, &c. *and againſt our Peace*.

And for ſuch Treſpaſs done upon the Soil and Poſſeſſion of the King, the Uſe is for to have an Information of Intruſion for the King in the Exchequer, and the Defendant there to anſwer it. And when he appeareth in the Exchequer, the Courſe is there to bind him in Recognizance at his Peril to leave the Poſſeſſion to the King; and yet it ſeemeth the King may have an Action of Treſpaſs, *Wherefore he broke the Cloſe*, &c. *and fed up the Herbage*, &c. *and cut the Trees*, &c.

And there are other Writs of Treſpaſs, *Wherefore they broke the Hedges and* K
Ditches of him the ſaid A. *&c.*

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is,

[91.] *Wherefore*, &c. *he digged in the ſeveral Soil of him the ſaid* A. *at* N. *and the Earth caſt from thence threw into his Ditches there*, *and put Lime and Hemp in the ſame Ditches*, *by which the Water being in the Ditches became ſo infected by the Corruption of the Lime and Hemp aforeſaid*, *that the Fiſh in the ſame Ditches to the Value of*, &c. *died*; *and other*, &c.

And another Writ of Treſpaſs for aſſaulting a Man in his Houſe, and lying A
in wait for him, until he make Oath that he will not bring any Action againſt him, *&c.* and the Writ is ſuch:

Wherefore upon him the ſaid I. *&c. and purſued him the ſaid* I. *into a certain Houſe*, *to which he there fled for ſaving his Life*, *and beſieged him therein for a long Time*, *and detained him ſo beſieged until he made his Corporal Oath*, *that he would not move any Action againſt him*, &c. *by reaſon of the Treſpaſs aforeſaid*, *or for any other Matter whatſoever*, &c.

(*a*) The Declaration may be *de raptu Cuſtodiæ*, as well as *de raptu hæredis*. Palm. 75. *Banfield* verſus *Hutchins*. Alſo it may be without ſaying *cujus Maritagium ad ipſum pertinet*. 12 *H.* 4. 16. *contr.* 32 *Ed.* 3. *Gard.* 329.

See 21 *H.* 6. 15. the Father commits his Son of the Age of one Year to a Nurſe, and goes out of the Country, and it is reported about the Country that he is dead; and for that the Infant was ill kept, the Uncle takes him, and retires to the Father, when he ſhall not be puniſhed for this Taking. And *Note*; he is named Heir in the Life of the Father. 31 *Ed.* 3. *Brev.* 327.

(*b*) And he ſhall recover the Value of the Marriage. 12 *H.* 4. 16. And *Note* 3 *Cro.* 55. *Gray* and *Jefferies*'s Caſe. See 29 *Aſſ.* 35. 21 *H.* 6. 24. *Dyer* 304. *Poſt.* 140. F. 143. R.

B And if a Man have Waif and Stray within his Manor by Preſcription, and another Man taketh the Waif or Stray out of the Manor, *&c.* he who hath the Manor ſhall have an Action of Treſpaſs for them, *&c.* and that without any Seizure of them before (*a*). 40 Ed. 3. 10.

C And if a Man take another Man and impriſon him, and compel him to make to him a Statute-merchant, or a Releaſe, or an Acquittance, he ſhall have an Action of Treſpaſs for the ſame, and the Writ ſhall recite the Matter, and the detaining in Priſon of him, *quouſque*, *&c.*

D If a Man have a Wreck by Preſcription, or by the King's (*b*) Grant, *&c.* if Goods be wrecked upon his Lands, and another taketh them away, he who hath the Wreck ſhall have an Action of Treſpaſs, (*c*) *Quare vi & armis*, for thus taking, without Seizure thereof before; and the Writ is ſuch:

To ſhew wherefore, ſeeing that the ſaid Th. *is Lord of the Manor of* Eſton Bavent, *and ought to have there, and he and his Anceſtors, Lords of the Manor aforeſaid, from Time out of Mind hitherto have been accuſtomed to have Wreck of the Sea within the Precinct of the Manor aforeſaid, the aforeſaid* Joice *and* Robert *with Force and Arms took and carried away Goods and Chattels to the Value of one hundred Shillings, caſt upon the Land at* S. *within the Precinct of the ſame Manor, which ought to belong to him the ſaid* Th. *as Wreck*, &c. Or thus: *Ten Pounds in Money*, &c. Or, *Wherefore, ſeeing that by Charter*, &c. *ought to have*, &c.

E If a Man ſend his Servant to apprehend his Villain, and to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Maſter another reſcueth him from the Servant, and lets him go at large; the Maſter ſhall have an Action of Treſpaſs for this Reſcous, and not the Servant, for the Wrong is done unto the Maſter, *&c.*

F If an Abbot or other Man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and ſuch Liberty, ſhall have an Action of Treſpaſs againſt the Sheriff for the Goods which the Sheriff took, and the ſame ſhall be *Quare vi & armis*, *&c.*

G (*d*) And if an Abbot or other Perſon ought to have Toll in any Place, and ſendeth his Servant to take the Toll, and another doth diſturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, ſhall have a general Action of Treſpaſs, *Quare vi & armis* they did aſſault his Servant, and diſturbed him to take the Toll. And the Writ is ſuch:

(*a*) See 43 *Ed.* 3. 8. 10 *H.* 6. 11. And *Note Dyer* 338. A Waif happens in one Franchiſe, and eſcapes into another Franchiſe before Seizure, the ſecond Lord ſhall have it, for the Property is not changed before the Seizure, by the better Opinion. 12 *H.* 8. 10. See 33 *H.* 8. *Eſtray* 11 7 *Ed.* 4. 10.

(*b*) That it is ſo in the King's Caſe, ſee 34 *Ed.* 2. *Treſpaſs* 326.

(*c*) See the like Writ maintained without Title made, (And *Note* there it is an Action on the Caſe.) 13 *Ed* 3. *Brief* 647.

(*d*) But *Note*; In this Caſe it ſeems, that the Name of the Buyer, as alſo of the Thing ſold, for which the Toll is due, ought to be ſhewn in the County. *Quære*, 9 *H.* 6. 45.

Wherefore, ſeeing that the ſame Abbot, by the Charters of our Progenitors aforeſaid, formerly Kings of England, *ought to have Toll of Things ſet to Sale at the Town of* S. *coming there, they the ſaid* R. *and* I. *with Force and Arms made an Aſſault upon* S. *the Servant of him the ſaid Abbot, by him deputed to collect ſuch Toll in the Town aforeſaid, and hindered him, ſo that he could not collect and receive ſuch Toll, and took from the ſaid* S. *certain Chattels there taken and attached by him the ſaid* S. *in the Name of a Diſtreſs for ſuch Toll, whereby the ſaid Abbot hath for a long Time loſt the Profits coming of ſuch Toll; and other,* &c.

And ſo if a Man ought to have Toll in a Fair, *&c.* and his Servants are H diſturbed to gather the ſame, he ſhall have the like Action for Aſſault (*a*) of Vide 1 H. 5. 1. 47 Ed. 3. 22. his Servants, and for the Loſs of their Service, and for the Diſturbance made unto them, and for loſing the Profit of his Toll, and all in one Writ.

And if a Man have a Fold in common with two other Men, and the one do diſturb him to ſet up his Clays and Pales, and break them, he ſhall have an Action of Treſpaſs againſt them in this Form, *Quare vi & armis*, thus:

If the Prioreſs of T. *ſhall make you ſecure,* &c. *then put,* &c. E. *&c. to ſhew wherefore, ſeeing that the ſame Prioreſs ought to have a certain Fold at* F. *together with the aforeſaid* E. *and* M. *of* B. *and ſhe the ſaid Prioreſs and her Predeceſſors from Time out of Mind always hitherto have been accuſtomed to have ſuch Fold with the aforeſaid* E. *and* M. *and their Anceſtors; the aforeſaid* E. *with Force and Arms broke the Clays and Pales of the ſaid Prioreſs in the Fold of them the ſaid Prioreſs,* E. *and* M. *at the ſaid Town of* F. *lately erected and placed, and hindered her the ſaid Prioreſs, ſo that ſhe could not put her Clays and Pales in the Fold aforeſaid, as belongeth to her, or partake any Profit of the ſaid Fold; and other,* &c.

A Man ſhall have an Action of Treſpaſs for taking of his Apprentice, or I 21 H. 6. 31. for taking of his Servant.

(*b*) And the Churchwardens ſhall have an Action of Treſpaſs for taking the K Goods of the Church, either in their own Time, or in the Time of their Predeceſſors.

(*c*) And a Man may have an Action of Treſpaſs for breaking of his Houſe L or Cloſe, and alledge a Continuance of the Treſpaſs, and of the Breaking thereof,

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(*a*) *Note*; Treſpaſs for beating his Servant, *per quod Servitium amiſit*, lies although he was not retained, but ſerved only at Will. 11 *H.* 4. 2. *per Hull* accordant. And ſo if *A.* retains *B.* to be his Servant, who departs into another County, and ſerves *C. A.* before any Requeſt or Seizure, cannot beat *B.* and if he does, *C.* ſhall have Treſpaſs againſt him, 21 *H.* 6. 9. and recover Damages, having Regard to the Loſs of the Service, 22 *Aſſ.* 76. and the Retainer is traverſable. 11 *H.* 6. 30.

(*b*) *Note*; They are the Goods of the Pariſhioners, and therefore in a *Fi' fac'* againſt a Parſon *de bonis Eccleſiaſticis*, if the Sheriff delivers the Goods of the Church in Execution, Treſpaſs lies by the Churchwardens. 8 *H.* 5. 4. But an Action cannot inure to them in Succeſſion. *Dyer* 48. An Indictment for breaking the Church, and taking the Goods of the Pariſhioners. *Dyer* 99.

(*c*) In Treſpaſs with a *Continuando* from ſuch a Day to the Day of ſuing the Writ, the Defendant ſays, that *A.* was ſeiſed and infeoffed him, and that ſo he was ſeiſed, till the Plaintiff by Colour entered, upon whom he the Defendant entered; the Plaintiff makes Title that *C.* was ſeiſed and infeoffed him, and that he was ſo ſeiſed, till he was diſſeiſed by the Defendant, *abſque hoc*, that *A.* infeoffed him; and it was found for the Plaintiff, and it was moved in Arreſt of Judgment, that the Plaintiff had abated his own Writ; for ſeeing he had ſhewn that the Defendant diſſeiſed him, and had not ſhewn any Re-entry thereof, from ſuch a Day unto ſuch a Day; as well as he may have for treading of his Graſs or cutting of his Corn, *&c.* (*a*).

M The Ordinary ſhall have an Action of Treſpaſs for thoſe Goods which he [92.] hath to adminiſter as Ordinary; where a Man dieth inteſtate, and the Goods are taken out of his Poſſeſſion, he ſhall have an Action of Treſpaſs for the taking thereof. But he ſhall not have an Action of Treſpaſs for Goods taken out of the Poſſeſſion of him that died inteſtate, but the Adminiſtrators ſhall have ſuch Action; for the Ordinary ſhall not have an Action for Goods or Debts of him that died inteſtate, but only an Action of Treſpaſs for the Goods taken out of his own Poſſeſſion. And the Proceſs in this Writ of Treſpaſs is an Attachment and *Diſtringas*; and if the Sheriff do at the Attachment or *Diſtringas* return *Nihil*, then he ſhall have a *Capias*, and *Alias*, and *Pluries*, and Exigent, and ſo Proceſs of Utlagary againſt him.

A If the King granteth a Protection unto a Man, by which Protection he taketh him, his Lands and Goods, into his Protection, as the common Courſe and Form of Protections are; now if another Man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the Time that the Protection is in Force, he ſhall have a ſpecial Action of Treſpaſs againſt him in this Form:

To ſhew wherefore, ſeeing that we lately took into our Protection and Defence W. *his Men, Lands, Goods, Rents, and all his Poſſeſſions, forbidding all and ſingular Perſons, that none ſhould bring thereupon Injury, Trouble, Damage or Grievance; the ſaid* B. *with Force and Arms took and carried away the Goods and Chattels of the aforeſaid* W. *while he was under our Protection, found at* N. *to the Value of one hundred Pounds, and his Men,* &c. *by which and other Wrongs,* &c. *to the great Damage of him the ſaid* W. *and againſt our Peace: And have there the Names of the Pledges and this Writ. Witneſs,* &c.

B And alſo he who hath the King's Protection, if any Man take his Goods, or enter into his Lands, *&c.* or beat his Servants, *&c.* he ſhall have a ſpecial Writ unto the Sheriff for to inquire of them, and to certify the ſame before the King, *&c.* and it ſeemeth the King ſhall make Proceſs againſt them by *Venire facias*, as upon an Indictment, and that thereupon they ſhall be fined; and the Writ is ſuch:

The King to the Sheriff of Lincolnſhire, *greeting: We command you, that by the Oath of honeſt and lawful Men of your County, by whom,* &c. *you diligently inquire what Malefactors and Diſturbers of our Peace with Force and Arms took and carried away the Goods and Chattels of* A. *to the Value of one hundred Pounds, found at* N. *(whom we took under our ſpecial Defence, his Men, Goods, Rents, and all his Poſſeſſions, forbidding all and ſingular Perſons, that none ſhould bring thereupon Injury, Trouble, Damage or Grievance) and made an Aſſault upon his Men there being, and them beat,* &c. *and other Wrongs,* &c. *to the great Damage of him the ſaid* A. *and againſt our Protection aforeſaid, and againſt our Peace: And without Delay ſend to us the Inquiſition thereof, diſtinctly and openly made, under your Seal and the Seals of thoſe by whom the ſame was made, and this Writ,* &c.

Re-entry after ſuch Diſſeiſin, he ſhall not have Treſpaſs with a *Continuando*, but only for the Entry, and ſo was the better Opinion. 19 *H.* 6. 28.

(*a*) See Treſpaſs of Corn (Blees) taken with a *Continuando*. 21 H. 6. 43.

But note, That there is a Statute made *Anno* 28 *Ed.* 3. *cap.* 6. that willeth, that no Commiſſion or Writ ſhall be from thenceforth granted unto the Sheriff to inquire, *&c.* But if ſuch Writ or Commiſſion be granted, *&c. quære* if it be good; it ſeemeth not, for this Statute is made only to bind the King, that he ſhall not grant, *&c.*

D There is another Writ, *Of Hay cut down in the Meadow, and fed*; and another Writ, *Of a Door ſhut, and Windows broken*, &c.

Writ de Treſpaſs ſur le Caſe.

E THERE is another Form (*a*) of Writ of Treſpaſs upon the Caſe, which is to be ſued in the Common Pleas or King's Bench; and in that Writ he ſhall not ſay *vi & armis*, *&c.* but in the End of the Writ he ſhall ſay *contra Pacem*; and the Form is ſuch:

The King to the Sheriff, &c. *If* Maud *of* D. *&c. then put*, &c. *that he be*, &c. *to anſwer as well us as* Maud, *wherefore, ſeeing that the ſame* Maud *lately in our Court obtained our certain Writ of Prohibition againſt the aforeſaid* I. *that he ſhould not proſecute any Plea in the Court Chriſtian touching Chattels and Debts, which do not concern Teſtament or Matrimony, and the ſame* Maud *delivered our ſaid Writ to the aforeſaid* I. *at* C. *he the ſaid* I. *having received our ſaid Writ there, caſt it into the Dirt and trod it under his Feet, and alſo hath proſecuted the Plea aforeſaid in the ſame Court Chriſtian, in Contempt of us and to the great Damage of the ſaid* Maud, *and againſt our Peace: And have*, &c. (*b*).

Note well this Writ, that it lieth for caſting a Writ into the Dirt. Crompton 133. acc.

F Another Writ; *Wherefore in the Water of* Plim, *along which, between* Humber *and* Gaunt, *there is a common Paſſage for Ships and Boats, he fixed Piles acroſs the Water, whereby a certain Ship, with thirty Quarters of Malt of him the ſaid* W. *was ſunk under Water, and twenty Quarters of the Malt of the Price of one hundred Shillings periſhed*; *and other Wrongs*, &c.

G And if the Leſſor do ouſt the Executors of the Leſſee of their Term, they ſhall have a ſpecial Action of the Caſe againſt the Leſſor, and the Writ ſhall be by Summons, *&c.* and not by *Pone per Vadios & ſalvos Pleg'*, as the other Writ of Treſpaſs is; and the Form is ſuch:

If Joan, *Executrix of the Teſtament of* E. *of* C. *ſhall make you ſecure*, &c. *then ſummon*, &c. P. *and* M. *to ſhew wherefore, ſeeing that they the ſaid* P. *and* M. *demiſed to the aforeſaid* E. *of* C. *one Mill and ſix Acres of Land, with the Appurtenances in* N. *for a Term which is not yet paſt, the aforeſaid* E. *of* C. *in his Teſtament deviſed the aforeſaid Mill and Land until the End of the ſaid Term to the aforeſaid Executrix, to execute the Teſtament aforeſaid thereupon*; *the aforeſaid* P. *and* N. *after the Death of him the ſaid* E. *of* C. *entred into the ſaid Mill and Land (during the Term aforeſaid) and unjuſtly withhold the ſame from the*

(*a*) See 7 *Ed.* 3. 2. 46 *Ed.* 3. 19. 31 *Ed.* 3.

(*b*) Action on the Caſe againſt one who had bought certain Truſſes of Hay, and letting them lie and rot, *&c.* without carrying them away. 13 *H.* 4. *Action ſur le Caſe* 48. So againſt one of whom another bought Goods which he had before ſtolen. 42 *Aſſ.* 8. So for not keeping of Goods, *&c.* But if it was without the Defendant's Default, he ſhall be quit. 42 *Aſſ.* 9.

ſaid Executrix, in Delay of the Execution of the Teſtament aforeſaid, as it is ſaid: And have, &c.

And if the Sheriff doth arreſt a Man upon a *Capias* directed unto him ſued forth upon a Statute-merchant, and afterwards ſet him at Liberty, he who ſued the Writ ſhall have a ſpecial Action upon the Caſe againſt the Sheriff, [93.] which is ſuch:

A *The King to the Coroners, greeting: If* A. *ſhall make you ſecure*, &c. *then put*, &c. *our Sheriff of* Suffolk, *that he be*, &c. *to ſhew wherefore he permitted* R. *a Merchant, lately taken and being in Cuſtody of the ſame Sheriff at* O. *by our Writ directed to the ſaid Sheriff by virtue of a certain Recognizance of one hundred Marks made to the ſaid* A. *by the aforeſaid* R. *according to the Form of the Statute lately ſet forth at* Acton Burnel, *to go at large againſt the Will of him the ſaid* A. *the ſaid* A. *not being ſatisfied of the ſaid one hundred Marks, to the great Damage of him the ſaid* A. *and in Delay of the Execution of the Recognizance aforeſaid, as it is ſaid: And have ye there this Writ*, &c.

B And if the Sheriff in a Writ of Account or Debt return upon any, *That he is not found, nor hath Lands*, &c. *by which* (*a*) *he could be diſtrained*, &c. for which a *Capias* is awarded againſt him, and he arreſted thereupon, where he hath ſufficient Lands, or Goods and Chattels; then he ſhall have an Action upon the Caſe againſt the Sheriff, directed unto the Coroners, as before is ſaid, *&c.*

C And ſo another Writ; If the Sheriff hath (*b*) a Priſoner committed unto him for Debt, *&c.* and afterwards he ſuffer him to go at Liberty before the Debt be ſatisfied, *&c.* he ſhall have an Action upon the Caſe againſt the Sheriff; and yet it ſeems he may have an Action of Debt againſt the Sheriff.

14 H. 7. 10.
22 Ed. 4. 1 & 2.
34 H. 6. 6.
21 H. 7. 30.
36 H. 6. 3.

D If a Man be indicted of Felony before any Juſtice, and one *T.* as one of the four Men of the Town, and *Reeve*, give the Evidence as Indictors, *&c.* and afterwards he who is indicted is acquitted, *&c.* and afterwards the Bailiff of the Hundred or other Officer ſhewed unto *T.* that he who is acquitted hath a Writ of Conſpiracy againſt him, and that he hath a *Capias* to arreſt him, by which he is arreſted and impriſoned until he pay ſix Marks for a Fine for his Deliverance, *&c.* he ſhall have an Action of Treſpaſs upon his Caſe: But it ſeemeth he may have a general Action of Treſpaſs in that Caſe upon falſe Impriſonment, if he have not any Writ directed unto him.

E If a Replevin be removed out of the Liberty by *Pone* into the Common Pleas, and afterwards (pendent the Plea there) the Bailiff of the Liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattle and impoundeth them, by means whereof ſome of them die for want of Food; the Party grieved ſhall have an Action upon the Caſe againſt the Bailiff of the Liberty who awarded that Return to hold Plea after the Matter removed in the Common Pleas.

F If a Man do attach another or his Goods for Debt, *&c.* in a Liberty, and after the Bailiff, by Covin betwixt him and the Defendant to diſcontinue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff ſhall have an Action upon the Caſe againſt the Bailiff, and the Writ is ſuch:

(*a*) See *Rot. Clauſ.* 26 *Ed.* 1. *m.* 8. *dorſo.*

(*b*) *Quære*, If he is not excuſed of an Eſcape, when by the King's Command. Stat. 1 *R.* 2. *cap.* 12. *Dyer* 161.

If A. *ſhall make you ſecure*, &c. *then ſummon* I. *Bailiff of the Great Court or Market of* N. *that he be*, &c. *to ſhew wherefore, ſeeing that he the ſaid Bailiff upon the Complaint of the aforeſaid* A. *attached* B: *by his certain Chattels to anſwer the aforeſaid* A. *in the Court aforeſaid, according to the Law of Merchants, as the Cuſtom is in our Kingdom of* England, *of a Debt of ten Pounds, which the ſaid* A. *requireth of the aforeſaid* B. *and in the Plaint aforeſaid in the ſame Court, between the Parties aforeſaid, it was ſo far proceeded, that they put themſelves upon the Inquiſition thereof; the aforeſaid Bailiff, pending the Inquiſition aforeſaid before him, by Colluſion had between himſelf and the aforeſaid* B. *in the Court aforeſaid, maliciouſly departed, and refuſed to take the Inquiſition aforeſaid, by which the Plea aforeſaid became diſcontinued; and he the ſame Bailiff afterwards delivered the Chattels aforeſaid to the ſaid* B. *the aforeſaid* A. *not being ſatisfied of his Debt aforeſaid, to the Damage of him the ſaid* A. *of twenty Pounds, as it is ſaid*, &c.

(*a*) And a Man ſhall have an Action of Treſpaſs upon the Caſe againſt his G Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks, and cleanſe certain Ditches and Sewers betwixt him and the Sea, and he doth not cleanſe them as he ought to do, by reaſon whereof his Land is ſurrounded, *&c.* he ſhall have his Action upon the Caſe againſt him for not mending the Banks, and cleanſing the Ditches and Sewers, *&c.*

If a Man be committed unto the Gaol for Debt or Arrearages of Account, H and the Gaoler of Malice lay ſo many Irons upon him, or ſet him in the Stocks, or keepeth his Victuals from him, by reaſon whereof he is ſo ſpent, that he becomes lame, or hath other Infirmity; he ſhall have an Action upon the Caſe againſt the Gaoler.

Vide Br. Attachment 23. But if he hath no other Goods, then he may attach theſe Goods.

If a Man doth diſtrain any Prior's or other Prelate's Horſe, whereupon he is riding in his Journey, for or upon any Contract, Debt or Treſpaſs done by him or his Predeceſſor, when he might have diſtrained or attached him by other Goods or Chattels of the ſaid Prior or Prelate, then he ſhall have an Action upon the Caſe, which is ſuch:

If A. *Prior*, &c. *put* B. *&c. to ſhew wherefore, ſeeing that it is not lawful* I *for any Perſon to diſtrain a Prelate, Nobleman, or any Eccleſiaſtical Perſon of our Realm, paſſing any where through the ſame Realm by his proper Equipage, by reaſon of any Contract or Debt, when he hath there other Beaſts and Chattels, whereby reaſonable Diſtreſs may be made upon him; the aforeſaid* B. *diſtrained the ſaid Prior paſſing through the Town of* C. *by reaſon of a certain Contract between* S. *formerly Prior of*, &c. *Predeceſſor to the aforeſaid Prior, and the aforeſaid* B. *a great while ſince made, as it is ſaid, by a certain Horſe his Palfrey, although he could have then made reaſonable Diſtreſs upon him by other Beaſts and Chattels there, and maliciouſly detained that Palfrey for a long Time, by which*

[94.]

(*a*) See 29 *Ed.* 3. 32. And the Action lies in the County, where he ought to repair. 7 *H.* 4. 8. 14 *Ed.* 1. 3. 15 *Ed.* 4. 18. or in the Country where the Land is ſurrounded. 11 *R.* 2. *Action ſur le Caſe* 36.' And one ſhall have a View on this Writ, and the Writ ſhall ſuppoſe a Tort done to him; otherwiſe *per Skin.* in a Writ *de muro reparando.* 7 *H.* 4. 8. And yet by *Thirning*, if the Plaintiff recover in this Writ, he ſhall not diſtrain *pro non reparando. Quære &* *vide* 7 *H.* 31. If the Defendant has nothing in the Land, by Reaſon whereof he ought to repair, except in Right of his Wife, the Writ ſhall abate againſt the Huſband only.

his weighty Buſineſſes, for which he made his Paſſage, were undone; and other Wrongs, &c.

A And if a Man promiſe and take upon him to make for another Man certain Carts for Carriages, or other Thing, and taketh Money beforehand for to do the ſame, and afterwards he doth not make them according to the Promiſe and Undertaking; the other may have an Action upon the Caſe againſt him, and the Writ ſhall be ſuch: 3 H. 6. 36. b. &c.

If W. *&c. then put* I. *&c. to ſhew wherefore, whereas he the ſaid* I. *undertook to make and build three Carts for carrying of the Victuals and Harneſs of him the ſaid* W. *to Parts beyond Sea, for* (*a*) *a certain Sum of Money, one Part whereof he hath beforehand received, within a certain Term between them agreed; he the ſame* I. *hath not taken care to make and build the Carts aforeſaid within the Term aforeſaid, by which he the ſaid* W. *hath wholly loſt divers his Goods and Chattels, to the Value of one hundred Marks, which ought to have been carried in the Carts aforeſaid, for want of the Care aforeſaid, to the great Damage of him the ſaid* W. *as it is ſaid: And have*, &c.

B And if a Man be lodged in any Inn, and any of his Goods be taken or ſtolen from thence by a Stranger, he ſhall have an Action upon the Caſe againſt the Innkeeper, and the Writ ſhall be ſuch: 42 Ed. 3. 11. 4 Ed. 6. 9. 22 H. 6. 21. 39.

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *that he be*, &c. *to ſhew*, &c. *wherefore, whereas according to the Law and Cuſtom of our Realm of* England *Innkeepers, who keep common* (*b*) *Inns to entertain Men paſſing by the Places where ſuch Inns are, and the Gueſts lodging in the ſame, and their Goods being in thoſe Inns without Subſtraction to keep Night and Day are bound, ſo that for Default of them the Innkeepers or their Servants Damage may not come in any Manner to ſuch Gueſts: Certain Malefactors took and led away a certain Horſe of the Price of forty Shillings of him the ſaid* A. *entertained within the Inn of the aforeſaid* B. *at* S. *found, for Default of him the ſaid* B. *and other Wrongs*, &c. *to the great Damage*, &c. *And have*, &c. *Witneſs*, &c.

C If a Man do ſell unto another Man a Horſe, and warrant him to be ſound and good, *&c.* if the Horſe be lame or diſeaſed, that he cannot work, he ſhall have an Action upon the Caſe againſt him. 9 H. 6. Action ſur le Caſe 15.

And ſo if a Man bargain and ſell unto another certain (*c*) Pipes of Wine, and warrants them to be good, *&c.* and they are corrupted, he ſhall have Action upon the Caſe againſt him. See 9 H. 6. 52. 11 H. 6. 18.

But

(*a*) See this Writ abated, for that it lies only on a Fact, and there was no Conſideration mentioned in the Writ. 2 *H.* 4. 3. accords, becauſe ſuch Action on the Caſe lies only for a Misfeaſance, but not for a Nonfeaſance, becauſe the Default is to be ſpecified, in 11 *H.* 4. 33. It is debated, whether the Action lies, and whether he ought to declare in certain, what he ought to have on the Agreement for his Labour. 3 *H.* 6. 36. 14 *H.* 6. 18. 19 *H.* 6. 49.

(*b*) See 2 *H.* 4. 7. He ought to ſhew in his Count, that the Defendant is a common Hoſt or Innkeeper, otherwiſe all will abate. 1 *H.* 4. 45. It is there ſaid, *&c.* that though the Hoſt or Innkeeper delivers the Keys to the Gueſt, it does not diſcharge him. See *Dyer* 158. the Hoſt excuſed for that he refuſed to receive the Plaintiff on a reaſonable Cauſe. See for Remedies againſt Hoſts, who refuſe to harbour Gueſts, 18 *H.* 7. *Kelw.* 50. *Dyer* 158. 5 *E.* 4. 2. 42 *Aſſ.* 17. 11 *H.* 4. 45. 22 *H.* 6. 21. and 39, *&c.*

(*c*) Yea, though they were ſold by a Servant, 9 *H.* 6. and there it ſeems that Action on the Caſe lies without any Warranty; ſo is 7 *H.* 4. 14. and ſee 11 *H.* 4. 6. where one ſells Clothes, and warrants them all to be of ſuch a Colour, if they

are

9 H. 6. 13. contra. Poſt. 98. K. Dyer 75. But note; It behoveth that he warrant it to be good, and the Horſe to be ſound, otherwiſe the Action will not lie. For if he ſell the Wine or Horſe without ſuch Warranty, it is at the other's Peril, and his Eyes and his Taſte ought to be his Judges in that Caſe. 26 *H.* 6. 35.

But if a Smith prick my Horſe with a Nail, *&c.* I ſhall have my Action D 24 H. 6. 10. 46 Ed. 3. 19. upon the Caſe againſt him, without any (*a*) Warranty by the Smith to do it well; and the Writ ſhall be, *Wherefore he fixed a certain Nail in one Foot of a certain Horſe of* J. *at* N. *by which it became corrupted, ſo that the ſame Horſe for a long Time could not labour, and he the ſaid* J. *during that Time loſt the Profit of his Horſe aforeſaid, to the Damage*, &c. For it is the Duty of every Artificer to exerciſe his Art rightly and truly as he ought (*b*).

And if any Sheriff or Under-Sheriff do diſtrain any Parſons or Vicars, or E other Spiritual Perſons, in any Lands whereof they are poſſeſſed in the Right 2 Inſt. 4. of their Churches, they ſhall have Actions upon the Caſe againſt the Sheriff in this Form:

The King, &c. *If* A. *Parſon of the Church of* C. *ſhall make you ſecure*, &c. *then put*, &c. B. *our Sheriff of* Somerſetſhire, *and* C. *our Under-Sheriff of the ſame County*, *that they be*, &c. *to ſhew wherefore*, *ſeeing that in the Articles of the Clergy of our Realm*, *granted by Lord* E. *lately King of* England, *our Progenitor*, *it is amongſt other Things contained*; *that our Miniſters*, *as Sheriffs or others*, *take not the Beaſts of Rectors of Churches for any Diſtreſſes in the Royal Way*, *nor in the Fees wherein thoſe Churches were formerly endowed*; *the aforeſaid Sheriff and Under-Sheriff*, *the Beaſts of the aforeſaid* A. *at* L. *in the Fee of him the ſaid* A. *of his Church aforeſaid*, *of which the ſame Church was formerly endowed*, *took and led them from thence to* S. *and impounded*, *and there for a long Time detained them impounded*, *againſt the Law and Cuſtom of our Realm*, *and contrary to the Form of the Articles aforeſaid*, *and againſt our Peace*: *And have*, &c.

7 H. 4. 44. If a Man ought to be quit of Toll for himſelf and his Tenant and Men, in F every Market or Fair, *&c.* Now if any Officer or Bailiff take a Toll of him, his Tenants or Men, he of whom the Toll is taken, ſhall have an Action of

are there in View of the Buyer, though they are not all of ſuch a Colour, an Action on the Caſe will not lie. But if they are in another Place, or are warranted to be of ſuch a Length, a Writ on the Caſe lies; if a Servant ſells Clothes for his Maſter, and warrants them, an Action on the Caſe does not lie againſt the Servant on ſuch Warranty, nor (as ſome held) againſt the Maſter, for he did not warrant them.

Note a Diverſity between Selling corrupt Wines to Merchandize, for there an Action on the Caſe does not lie without Warranty; otherwiſe, if it be for a Tavern or Victualler, if it prejudice any. See 19 *H.* 6. 49. accordant.

(*a*) See 14 *H.* 6. 18. So if he promiſe, and does not ſhoe my Horſe. 19 *H.* 6. 44. 48 *Ed.* 3. 16. Caſe againſt a Smith who refuſes to ſhoe my Horſe. 21 *H.* 6. 55. 18 *H.* 7. *Kelw.* 50.

(*b*) If one retains Counſel, and gives him his Fee to aſſiſt him in the Purchaſe of ſuch a Manor, if he becomes Counſel for another, or diſcovers his Counſel, Caſe lies; yet though he warrants his Client that he ſhall have the Manor, but fails therein, yet if he does his Endeavour, Caſe does not lie; for perhaps he could not have the Manor, *i. e.* it was impoſſible. 11 *H.* 6. 24. 55.

Treſpaſs on the Caſe, for that the Defendant aſſumed to cure his Horſe, *Et quod ille tam negligenter & improvide, &c. medicinal', &c. quod Equus interiit*; it was held, (1.) If one who is not a common Farrier kills a Horſe by Medicines, without Doubt Caſe will not lie, without a ſpecial Promiſe. And (2.) Held in that Caſe by *Newton* and *Aſcough*, that there being no ſuch Promiſe, Caſe would not lie; though he was a common Farrier, and ſo the Aſſumpſit is traverſable. 19 *H.* 6. 49. *Sed vide contr.* 48 *Ed.* 3. 6. 17 *Ed.* 4. 4. See 11 *R.* 2. *Action ſur le Caſe*, 37, 39. 21 *H.* 6. 55.

Treſpaſs upon the Caſe againſt him who took the Toll, or diſtrained his Goods for the Toll. And alſo he may have a Writ out of the Chancery directed unto the Bailiffs or ſuch Officers, that they ſuffer them to be quit of Toll, *&c.* and he may have an *Alias* and a *Pluries*, and Attachment thereupon againſt the Bailiffs or Officers, if they do not obey ſuch Writs, and the *Pluries* ſhall be returned into the Common Pleas or King's Bench.

G (*a*) If a Man hath a Manor within any Honour, and by Preſcription hath had View of Frankpledge of his Tenants within his Manor, *&c.* Now if he or his Tenants be diſtrained by the Lord of the Honour, to come unto the Leet of the Honour, and to preſent there thoſe Things which ought to be preſented within the View of Frankpledge within the Manor, he who is diſtrained may have a general Action of Treſpaſs for this Diſtreſs, or he may have a ſpecial Writ directed unto the Bailiffs or Officers of the Honour reciting the whole Matter, commanding them that they ſuffer the Lord of the [95.] Manor to have and to hold his Leet of the Demeſne, *&c.* as he hath uſed to do; and that they do not diſtrain him or his Tenants in any wiſe to come unto the Leet of the Honour, to preſent any Thing which ought for to be preſented in the Leet of the Manor; and alſo comprehending in the ſame Writ, that if they have taken any Diſtreſs for that Cauſe, that he then redeliver them, *&c.* And upon that he may have an *Alias* and *Pluries*, and Attachment againſt them, if they do not obey the aforeſaid Writs.

A And alſo if a Man hath uſed to have a Gulf of Water in any Water, and it hath been uſed that no other ſhould make a Gulph in the ſame Water, between his Gulph and the Gulph of *B.* now if another doth make another Gulph betwixt them, he ſhall have his Action upon the Caſe in this Manner (*b*). *If* A. *Parſon of the Church of* C. *ſhall make you ſecure*, &c. *put*, &c. R. *of* T. *&c. wherefore, whereas he the ſaid* A. *ought to have, and he and his Predeceſſors, Parſons of the Church aforeſaid, from Time beyond Memory always hitherto have been accuſtomed to have a certain Gulph in the Water of* W. *in* B. *ſo that in the ſame Water, between the Gulph of him the ſaid* A. *and the Gulph of* S. *of* E.

(*a*) The Abbot of *Farnham* brought a Writ againſt the Sheriff of *Lancaſter*, and counted that the King had granted to the Abbot's Predeceſſors and Succeſſors, the Sheriff's Turn within the Lands of *Farnham*, ſo that neither the Sheriff or other Miniſter ſhould intermeddle therein; and the Sheriff of *Lancaſter* came to *Farnham*, and held his Turn within the ſaid Lands, and cauſed the Men of the Farnchiſe to preſent Matters Preſentable, who preſented Bloodſhed by *I. S.* whereupon the ſaid Sheriff diſtrained *I. S.* to come to his Turn of *Lancaſter*, and then ſet on him a Fine of 10 *s.* And when he (the Abbot) delivered to the ſaid Sheriff the King's Writ to ſurceaſe, and he did not, he then delivered him an *Alias*, *Pluries*, *&c.* And his Writ mentioned all this Matter, and that ſo the Defendant had entered into the Franchiſe to his Wrong, and in Contempt of the King, and his Commands, and to his Damage, *&c.* and it was reſolved, 1. That this Writ *tam quam*, *&c.* is good, and the King ſhall be anſwered therein. 2. That where the Writ was *quo minus idem Abbas Turnum ſuum tenere poſſit*, it is well alledged, (tho' not ſaid ouſted thereof,) that he was diſturbed in holding it; and ſo the Action lies, and a *Reſpondeas* awarded. *M.* 14 *Ed.* 3. 17 *Ed.* 3. 56. See Action on the Caſe for Diſturbance of his Ferry, 22 *Aſſ.* 17.

Treſpaſs by the Abbot of *Weſtm.* for diſturbing his Bailiff to hold his View which he had by the King's Grant, *&c.* and it was agreed, that he need not ſhew the Charter in this Action, but in a *Quo Warranto*; wherefore the Defendant pleaded, that he and his Predeceſſors had a View there, *abſque hoc*, that the Abbot had a View. *Trin.* 16 *E.* 3.

(*b*) But not for erecting a new Mill or Schoolhouſe, which draws away all the Cuſtom; *contra*, of a Ferry or Fair. 22 *H.* 6. 14.

Lord of the Manor of H. *none ought or have been accuſtomed in any Times paſt to levy any Gulph, fix Pales or Clays, or place any Nets for taking Fiſh therein; he the ſaid* R. (*a*) *hath fixed Clays and Pales between the Gulphs of the aforeſaid* A. *and* S. *in the ſame Water, and hath placed Nets for taking Fiſh therein, and there fiſhed, and carried away the Fiſh thereof, by which he the ſaid* A. *loſt the Profit of the aforeſaid Gulph to the Value of one hundred Shillings; and other Wrongs*, &c. *And have*, &c.

And if a Man hath a Liberty to return Writs, and to execute them, if the Sheriff *ex officio* enter into the Liberty, and execute any Proceſs there, the Lord of the Liberty ſhall have an Action upon the Caſe againſt him; and theſe Writs do appear in the Regiſter. B

If a Man be found in Arrearages before Auditors, for which the Auditors do commit him to the Gaol, and afterwards he eſcape from thence, now the Gaoler ought to pay the Money which was arrear upon the Account. And the Gaoler ſhall have his Action upon the Caſe againſt him who eſcaped to anſwer unto the King for the Eſcape; and to the Gaoler for the Damages which he hath ſuſtained; the Form of the Writ is ſuch: C

The King to the Sheriff, &c. *We have received Information from the grievous Complaint of* A. *that whereas* B. *lately rendered his Account for the Time wherein he was Bailiff of* C. *in* N. *to the ſame* C. *within the Liberty of* K. *and he the ſaid* B. *was afterwards arreſted for the Arrearages of that Account by the Auditors of the ſame Account, and was delivered to the aforeſaid* A. *Keeper of our Gaol of our Liberty aforeſaid, to be kept in the ſame Gaol until he ſhould have fully ſatisfied the aforeſaid* C. *of the Arrearages aforeſaid, according to the Form of the Statute provided touching ſuch Receivers and Bailiffs, the aforeſaid* B. *againſt our Peace, eſcaped out of the Cuſtody of the aforeſaid* A. *the aforeſaid* C. *not being ſatisfied of the Arrearages aforeſaid, by reaſon of which Eſcape he the ſaid* A. *hath fully ſatisfied the aforeſaid* C. *of thoſe Arrearages according to the Form of the Statute aforeſaid, to the great Damage and Grievance of him the ſaid* A. *and becauſe we will not leave that Treſpaſs unpuniſhed, if it was ſo committed, we command you, that if the aforeſaid* A. *ſhall make you ſecure, then that you attach the aforeſaid* B. *by his Body, ſo that you may have him before us*, &c. *to anſwer to us for the Eſcape aforeſaid, and to the aforeſaid* A. *for the Damages which he hath ſuſtained by reaſon of that Eſcape: And have there this Writ*, &c.

And if a Man play with another at Dice, and he hath falſe Dice with which he playeth, and get's the other's Money with theſe falſe Dice, he who loſeth his Money, may have his Action upon the Caſe for this Deceit, and the Form of the Writ is ſuch: D

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure, then put*, &c. T. *of* D. *&c. that he be*, &c. *to ſhew wherefore, whereas the aforeſaid* T. *of* D. *contriving deceitfully to defraud him the ſaid* A. *and to extort divers Sums of Money from the ſame* A. *excited and procured the ſaid* A. *to play at Dice with him the ſaid* T. *at a certain Game called the Dozen for divers Sums of Money, at* Burton upon Trent, *and the ſaid* A. *there played with him at Dice at the Game aforeſaid, the aforeſaid* T. *certain Dice truly titled delivered to him the ſaid* A. *to throw, and when the ſaid Dice happened to come to the Hands of him the ſaid* T.

(*a*) And if the Writ be *vi & armis*, it ſhall abate. 31 *Ed.* 3. *Action ſur le Caſe* 38.

he the ſame T. *falſely and fraudulently threw certain other falſe Dice, and deceitfully titled, which he knew would turn up Number twelve at every Throw, by which he the ſaid* A. *loſt great Sums of Money to him the ſaid* T. *at that Game, and the ſaid* T. *falſely and deceitfully took and carried away thoſe Sums under Colour of Gain, to the Damage of him the ſaid* A. *of five Pounds, as it is ſaid: And have you there the Names of the Pledges, and this Writ. Witneſs*, &c. And this Writ was ſued *Anno* 5 *Ed.* 4. which ſee in the *Regiſter* 240.

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with falſe Dice, *&c.* by which he gets the Plaintiff's Money; it ſeemeth the Plaintiff may maintain this Action well enough, becauſe the Inticement is not the Cauſe of the Action, but the Caſting of the falſe Dice, by which he gaineth the Money, *&c.*

Writ of Diſceit.

E THIS Writ (*a*) lieth properly where one Man doth any Thing in the Name of another, by which the other Perſon is damnified and deceived; then he who is ſo damnified ſhall have this Writ, and the Writ is without the Words *vi & armis*, and the Writ is ſuch:

Vide Long 5 Ed. 4. 40. 18 Ed. 2. Diſceit 41.

This Writ cannot be ſued by Attorney. 19 H. 6. 50. It ſhall not abate for Form, if it hath Matter of Subſtance.

The King to the Sheriff of Lincolnſhire, *greeting: If* A. *ſhall make you ſecure*, &c. *then put*, &c. P. *&c. as well to anſwer us as the aforeſaid* A. *wherefore he fraudulently and maliciouſly in our Court of Chancery obtained our certain Writ by a Fine of twenty Shillings, taken for our Uſe, for the Writ aforeſaid, in the Name of the aforeſaid* A. *who was wholly ignorant of this, in Deceit of our Court, to the great Damage of the ſaid* A. *And have you there the Names of the Pledges and this Writ*, &c.

26 Ed. 3. 65. Diſceit 58. The King ſhall have this Writ, if no other will ſue it, becauſe it is penal. 19 H. 6. 44.

So if a Man levy a Fine, confeſs an Action or Recog. or Statute, or appear as Vouchee in my Name.

By which it appeareth, That if a Man do purchaſe a Writ in my Name, for which Writ I ought to pay a Fine in the Chancery, as the Courſe there is

Bro. Fine pur Contempt 63.

(*a*) And *Note*; Such Writ lies notwithſtanding the Record on which it is founded be cancelled or avoided before. See 17 *E.* 3. 12. §. 1.

If one anſwers for another as Attorney without any Warrant, the Defendant may move this pending the Plea; but if Judgment be given, he is put to his Writ of Diſceit againſt the Attorney, and he ſhall recover Damages; and if the Defendant (Plaintiff) was Party to the Diſceit, he ſhall have the Writ againſt both, and recover. 21 *Ed.* 3. 45. by *Thirning*.

A. brought a Writ of Diſceit againſt *B.* for that he had ſued an original Writ of Debt, and three *Capias's* in the Name of *C.* without his Aſſent againſt *A.* whereby *A.* was vexed, and put to Coſts; the Defendant, as to the Original, pleads the Conſent of *C.* and as to the *Capias's*, pleads an Award. It was moved, that the laſt Plea might go to the Whole; for *A.* was not damaged by ſuing of the Original, ſo no Action lies for that; yet by the better Opinion, ſeeing that was the Beginning of the Tort, he ſhall anſwer it. 7 *H* 6 43.

See *Mich.* 38, 39 *Eliz. inter Gellibrand* and *Hubbart*, *Moor*'s Caſe 866. in the Star Chamber, agreed that if one levies a Fine in another's Name, a *Vacat* thereof ſhall be entered on the Roll. See divers Precedents there cited accordingly.

for every Writ of Debt of the Sum of forty Pounds or more, to pay for every Writ of forty Pounds 6*s.* and 8*d.* and if it be of one hundred Marks 6*s.* 8*d.* And ſo for every hundred Marks 6*s.* 8*d.* and ſo for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for
19 H. 6. 44. every Writ which is of the yearly Value of five Marks 6*s.* 8*d.* &c. and ſo ac-
7 H. 6. 33. cording to that Rate. And then if a Man purchaſe ſuch a Writ in my Name, and I know not thereof, I ſhall have this Writ of Diſceit.

And if I do preſent one unto a Church whereof I am the Patron, unto the Ordinary, and one *T.* doth diſturb me, for which Diſturbance another doth purchaſe a *Quare impedit* in my Name returnable in the Common Pleas againſt the ſaid *T.* I not knowing thereof, and afterwards cauſeth the Writ to abate, or me to be Nonſuit in that Writ, I ſhall have this Writ of Diſceit againſt him who purchaſed that Writ, *&c.* A

19 H. 6. 44. If one forge a Statute-merchant in my Name, and ſueth a *Capias* thereupon, for which I am arreſted, I ſhall have this Writ of Diſceit againſt him that forged it, and againſt him who ſued forth the Writ of *Capias*, *&c.* B

If a Man make an Obligation in my Name, I ſhall not have Diſceit, becauſe I may plead Non eſt factum.

If a Prior or Abbot have Title to preſent unto a Vicarage whereof they are Parſons imparſonee, and Clerks ſecular or regular at their Wills; and afterwards another doth forge a Grant in the Name of the Abbot or Prior under their Covent Seal, that they do grant to one of the Pariſhioners, *&c.* that they ſhall preſent a ſecular Perſon, and not a Regular, as a Canon or ſuch, *&c.* the Prior or Abbot may have a Writ of Diſceit, and the Form ſhall be ſuch: C

If the Prior of Bartholomew *of the Suburbs of* London, *&c. put*, &c. W. *and* B. *&c. that they be before us in eight Days of Saint* Martin, *wheresoever*, &c. *to ſhew wherefore, whereas the ſame Prior ought and hath hitherto been accuſtomed, at his Will to preſent a fit ſecular or regular Perſon to the Vicarage of Saint* Sepulchre *without the Walls of* London, *which ſaid Church the ſame Prior holds to his own Uſe*; *the aforeſaid* W. *and* B. *by Colluſion betwixt them before had, maliciouſly contriving to injure the aforeſaid Prior, have counterfeited the common Seal of the ſaid Priory, and certain Letters Patent by which the Predeceſſors of the aforeſaid Prior ought to have granted, that the ſame Prior and Convent of the Place aforeſaid ought to preſent a ſecular Perſon, and no other, to that Vicarage, have cauſed to be ſealed with the ſaid counterfeited Seal, and have exhibited thoſe Letters ſealed with the ſaid Seal in a certain Cauſe moved at the Inſtance of him the ſaid* W. *as a Pariſhioner of the Church aforeſaid, between him the ſaid* W. *and the aforeſaid Prior, before the Official of the Court Chriſtian of* Canterbury, *upon the Removal of Friar* R. *of* F. *Canon of the aforeſaid Prior, admitted upon his Preſentation to the Vicarage aforeſaid by the Biſhop of* London, *and have procured him the ſaid Prior to be wearied divers Ways in this Matter with Labour and Expences by virtue of the Letters aforeſaid, to the great Expence and Grievance of him the ſaid Prior: And have you there the Names of the Pledges and this Writ*, &c. *Poſt.* 98. N. 22 *Ed.* 3. 11.

And if a Man be Attorney for another in a Plea Real againſt the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes Default, for which the Land is loſt, the Tenant who loſt the Land ſhall have a Writ of Diſceit againſt the Attorney, and the Writ ſhall be ſuch: D

To ſhew wherefore, whereas the ſaid A. *made the aforeſaid* B. *his Attorney before us, in a Plea which was before our ſame Juſtices by our Writ, between* K. *Demandant, and the aforeſaid* A. *Tenant, of twenty Acres of Land with the Appurtenances in* C. *to gain or loſe in the Plea aforeſaid, the aforeſaid* B. *by Colluſion had between him and the aforeſaid* K. *abſented himſelf* gratis *at a certain Day prefixed by the aforeſaid Juſtices in the ſame Plea in the Bench aforeſaid, by which the ſaid* A. *for the Default of him the ſaid* B. *loſt his Land by the Conſideration of our Court, in Deceit of our ſame Court, and to the great Damage and manifeſt Danger of the Diſheriſon of him the ſaid* A. *And have,* &c.

E And if an Action of Treſpaſs be brought againſt many, and the Plaintiff and one *J.* by Covin between them cauſe certain Perſons to come into Court and ſay, that they are the ſame Defendants, and that they make the ſaid *J.* their Attorney, and afterwards the ſaid *J.* as Attorney for the Defendants, pleadeth unto Iſſue, and afterwards ſuffers the Inqueſt to paſs by Default, by which the Plaintiff doth recover againſt the Defendants: Now thoſe who are the true Defendants ſhall have a Writ of Diſceit againſt *J.* who appeared as Attorney for them, *&c.* and the Writ appeareth in the Regiſter.

And ſo if *R.* doth recover in an Aſſiſe againſt *W.* certain Tenements and Damages, and becauſe *W.* hath nothing in the ſame County to levy the Damages, *R.* removeth the Record of Aſſiſe into the King's Bench or Common Pleas, to ſue forth Proceſs thereupon, and to have Execution of the ſaid Damages recovered, for which the ſaid *W.* to defraud the ſaid *R.* of his Execution, ſueth for a Writ to remove the Record in Chancery, ſurmiſing that he will have an Attaint thereupon before the Juſtices of Aſſiſe, *&c.* by which the Record is removed into the Chancery, and delivered to the ſaid *W.* to carry [97.] to the ſaid Juſtices of Aſſiſe, whereupon he may ſue his Attaint. Now if the ſaid *W.* will not ſue forth the Attaint, but delay him, to ouſt him of his Execution, *R.* who recovered ſhall have a Writ of Diſceit againſt him upon the Matter, which appeareth in the Regiſter.

A One *I. de A.* ſueth a *Præcipe quod reddat* againſt *C.* and *T.* his Wife, who plead a Fine levied to the ſaid *T.* by one *F.* and *Margaret* his Wife, Mother of the Demandant, *&c.* and the Defendant ſaith, that his Mother's Name is *Margery* and not *Margaret*, and after Day is given by the Court, at which Day *C.* and his Wife procure and cauſe a Stranger to come into Court, and confeſs the Fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant ſhall have a Writ of Diſceit againſt the ſaid *C.* and *T.* his Wife, as appeareth by the Regiſter. But it ſeemeth, that if *Margery* do levy a Fine of her Land by the Name of *Margaret*, that ſhe (*a*) and her

5 Ed. 4. 40. B. Confeſſ. & Avoid. 40. Where a Man levieth a Fine of my Land in my Name, I may confeſs and avoid the ſame, as to ſay that another of the ſame Name levied the ſame; without that, that I levied the ſame; for I ſhall not have Diſceit; by Littleton and Danby.

(*a*) See accordant 13 *Ed.* 3. *Eſtoppel* 231. 1 *Aſſ.* 11. 3 *Aſſ.* 4. where one granted a Reverſion on an Eſtate for Life, which he leaſed by the Name of *Gilbert filius Stephani*. In a *Quid juris clamat* againſt the Son of the Leſſor, he pleads, that his Father's Name was *Richard Fitz-Stephen*, *&c.* whereby there ought to have been an Attornment to the Grantee, *cumque hoc*, that G. and

Heirs ſhall be concluded to ſay, that ſhe hath another Name. But the Tenant may plead, that ſhe by the Name of *Margaret* did levy a Fine of her Land, *&c.* and that hath been done where a Woman had to her Name *Agnes*, and ſhe levieth a Fine by the Name of *Anne*, it hath been awarded good, and ſhall bind her and her Heirs, and ſhall be pleaded, that ſhe by the Name of *Anne* levied the Fine.

20 H. 6. 10. and the Writ was brought where he was at the Time of this Protection.

B

If a Man ſue a *Præcipe quod reddat* againſt divers Tenants, and they purchaſe a Protection for one of them, ſurmiſing that he is beyond the Seas upon the King's Service, whereas he is and always hath been remaining in *England*, by which the Demandant is delayed: The Demandant ſhall have a Writ of Diſceit againſt the Tenants for that Delay; and the Writ ſhall be ſuch:

44 H. 3. 4. If a Man ſueth a Protection, and doth not go, this Writ lieth; contrary, if he go, though he preſently return.

If A. *ſhall make you ſecure*, &c. *then put* B. *and* C. *&c. that they be before*, &c. *as well to anſwer us as* A. *wherefore, whereas he the ſaid* A. *in our Court before our Juſtices of the Bench impleaded* (*a*) *by our Writ the aforeſaid* B. *and* C. *of three Parts of the Manor of* S. *with the Appurtenances, they the ſaid* B. *and* C. *manifeſtly contriving to evade our Court and the Law and Cuſtom of our Realm of* England, *and to delay the Proſecution of the aforeſaid* A. *in this Behalf at a certain Day prefixed to the ſaid Parties in the ſame Plea before the ſaid Juſtices, cauſed to be produced before the ſaid Juſtices our certain Letters of Protection, comprizing that he the ſaid* C. *was then gone into Parts beyond the Seas in our Service, and ſo he was to be quiet touching all Pleas and Complaints, except Pleas of Dower* unde nihil habet, *and* Quare impedit, *and Aſſiſe of Novel Diſſeiſin, and Darrein Preſentment, and Attaints, and except Pleas in which he might happen to be ſummoned before our Juſtices in Eyre in their Circuits, he the ſaid* C. (*b*) *being then, afterward and before that Time, continually reſiding in* England, *by which that Plea before the ſaid Juſtices remained without Day, in manifeſt Contempt of us, and in Deceit and manifeſt Evaſion of our Court aforeſaid and of the Laws and Cuſtom aforeſaid, and alſo to the great Expence and manifeſt Danger of the Diſheriſon of him the ſaid* A. *And have there*, &c.

G. named in the Note, *&c.* are one and the ſame Perſon, and thereon the Tenant went without Day, *i. e.* the Plaintiff was Nonſuit; yet it was agreed, that the Reverſion paſſed. 11 *Ed.* 3. *Quid Juris* 2. 9 *Ed.* 4. 42.

(*a*) See ſuch Writ of Diſceit brought for purchaſing a Protection, *quia moratur*, and laid in the County where the Protection was, and it may be in the County where the *Moration*, or Abiding was, *per Cur'*, 20 *H.* 6. 10. the Abbot of *Selby*'s Caſe, without ſhewing either in the Writ or the Count, the Date of the Protection. 20 *H.* 6. 18.

(*b*) But it is a good Plea to ſay, that the Malady took or ſeized him going, *&c.* ſo that he could not go, *&c.* 18 *Ed.* 3. 12. See ſuch Writ brought againſt one who purchaſed a Protection, *quia moraturus*, whereas he was not at the Time of the Protection caſt, remaining *in obſequio noſtro, ſed apud* B. *&c. propriis Negotiis intendendo*, the Defendant ſhews his Detainer and Safeguard to *Calais*, and that he returned by the Lieutenant's Command to buy Victuals, *&c. abſque hoc*, that he was intendant *propriis Negotiis*. 20 *H.* 6. 24.

C In a *Præcipe quod reddat*, if the Sheriff return the Tenant ſummoned where Poſt. 107. H.
he was not ſummoned, by which the Defendant loſeth his Land by Default at 104. P.
the *Grand Cape* returned, the Tenant ſhall have a Writ of Diſceit againſt him
who recovered, and againſt the Sheriff for his falſe Return, and by that Writ
the Tenant ſhall be reſtored unto his Land again. And it ſeemeth the Tenant
ſhall have this Writ after Judgment given for the Demandant againſt him
that recovered before any Entry or Poſſeſſion: For if the Tenant ſhall not
have a Writ of Diſceit before the Demandant doth enter, then perhaps the
Demandant will not enter, until the Summoners in the *Præcipe quod reddat*,
and the Summoners, Viewers and Pernors in the *Grand Cape* (*a*) are dead, and
then he ſhall not have a Writ of Diſceit after their Deaths; for whether he
were ſummoned or not ſhall be tried by the (*b*) Summoners, and Viewers and
Pernors, by examining of them. But ſee 3 *Ed.* 3 That the Tenant ſhall not 3 Ed. 3.
have a Writ of Diſceit before the Demandant hath entered; *tamen quære.* Diſceit 47.
And in a Writ of Diſceit the Proceſs ſhall be made againſt the Summoners, 18 Ed. 2.
Viewers and Pernors to be examined thereupon, *&c.* And if the Demandant Diſceit 54.
who recovered by falſe Return of the Sheriff, make a Feoffment of the Land,
then the Writ of Diſceit lieth againſt the Demandant who recovered, and
againſt his Feoffee and the Sheriff, and if the Demandant who recovered
be dead, and the Sheriff alſo, yet the Writ of Diſceit lieth againſt the Demandant's 18 Ed. 4. 11.
Heir, and againſt him who is Tenant of the Land, if the Summoners, 38 Ed. 3. cont.
Viewers or Pernors be living: But if the Summoners, Viewers or
Pernors be dead, then the Writ of Diſceit is loſt. But a Writ of Diſceit lieth
if any of the Summoners, Viewers or Pernors be alive; for if they ſay that
they did not ſummon him, then the Plaintiff in the Writ of Diſceit ſhall recover
his Land and ſhall be reſtored, *&c.* for it ought to be done by two (*c*) 35 H. 6. 46.
Summoners at the leaſt, and two Viewers, *&c.* And if any of them do not 1 Ed. 2.
that which is returned they ought to do, then the Writ is not executed as it Diſceit 48.
ought to be, by which the Plaintiff in the Writ of Diſceit ought then to be
reſtored, *&c.*

(*a*) But yet he ſhall have Caſe againſt the Sheriff, 1 *H* 6. 1. and recover Damages. 6 *Ed.* 4. 3. *Note*; If in this Writ the Sheriff returns the Party warned, where in Truth he was not, and Judgment is given that the Demandant ſhall have Reſtitution, he ſhall have this Writ againſt the Sheriff, and if the Diſceit is found recover Damages, but not defeat the Remedy had. 8 *H* 6. 2. *per Sharſ.* for he cannot loſe by the Default, but by the Diſceit found he may.

(*b*) *Note*; The Proceſs is a *Venire facias*, *&c.* and if the Summoners, *&c.* appear, but he who recovers, or the Party are not warned, the Summoners ſhall be examined, and a *Diſtringas* ſhall iſſue; and if the Diſceit be found, Judgment may be given inſtantly againſt them who made Default, without a *Diſtringas*, or Writ of *Scire facias*, 8 *H.* 6. 2. 50 *Ed.* 3. 18. or he may have a *Diſtringas*, 12 *Ed.* 3. 21. *Note*; He may have alſo a Writ of Diſceit againſt the Party to the Recovery, *&c.* See 8 *H.* 6. 1. 30 *Ed.* 3. 49. So he may have it againſt the Party who recovers, or his Heir, and a *Scire facias* after the Diſceit found, againſt the Tertenant. 18 *Ed.* 4. 11. 38 *Ed.* 3. 16. See 18 *R.* 2. *Diſceit* 49. 8 *Ed.* 3. 6. 8 *H.* 6. 2. 20 *Ed.* 3. 43. 8 *H.* 4. 24. *contr.* 38 *E.* 3. *contr.*

(*c*) And therefore if one of the Summoners ſays that the Summons was not made, and the other that it was made, the Demandant ſhall recover. 8 *H.* 6 2. 50 *Ed.* 3. 17. So if one makes the Garniſhment, and the other was on the Land at the ſame Time for the ſame Purpoſe, but ſays nothing, the Demandant ſhall recover. 5 *Ed.* 3. 65. 8 *Ed.* 3. 6. See 2 *Ed.* 3. 21.

And in a *Scire facias* to execute a Fine, if the Sheriff return the Tenant ſummoned by two Summoners, if it be not true, yet the Tenant by the Return ſhall loſe the Land, for Execution ſhall be awarded upon the Return, if the Tenant do not appear, and then the Tenant ſhall have a Writ of Diſceit againſt the Sheriff, and him who had Execution, and him who is Tenant, and ſhall be reſtored to the Land (*a*). D

Poſt. 98. R. 99. H. And ſo if a Man (*b*) ſue a *Scire facias* upon a Recognizance of Debt, and the Sheriff return the Defendant ſummoned, where he is not ſummoned, for which the Plaintiff hath Execution awarded, the Defendant ſhall have a Writ of Diſceit againſt him who had Execution, and the Sheriff ſhall be puniſhed by this Writ for his Falſity, and the Party who recovered ſhall make Reſtitution of that he recovered, *&c.* (*c*).

And

(*a*) *Contra per Juine.* He ſhall recover only Damages, and for that it ſhall be tried by the Inqueſt. 1 *H.* 6. 5.

(*b*) See *Rot. Parl.* 21 *Ed.* 3. *nu.* 25. A Petition for a Writ of Diſceit in the like Caſe.

Note; *A.* brought a *Scire facias* againſt *B.* upon a Fine, whereby the Tenements were rendered to *B.* in Tail, Remainder to *C.* *&c.* the Tenant pleads that the Queen had a Writ of Diſceit pending, to reverſe the Fine; for that the Tenements were Parcel of her Manor of *D.* which is Ancient Demeſne, and that ſhe held the Manor for Life by a Leaſe from the King, and thereupon Day was given to the Parties. And now the Queen's Attorney (and *B.* the Tenant) appears, who ſays, That he knows nothing why the Fine ſhould not be reverſed. And now *A.* *ex gratia Curiæ* was received to anſwer, wherefore the Tenant did not deny, *&c.* and he demanded Judgment of the Writ. 1. For that *A.* and *C.* to whom the Eſtate is limited by the Fine are not made directly Parties to the Writ; *ſed non allocatur per Cur'*, who ſaid, That this Writ is good, and ſhall be always brought againſt the Tertenants. 2. That the Queen had nothing in the Manor, nor had at the Day of the Writ purchaſed; for ſhe had demiſed it before. — *Wilby.* This Suit is given to the King, but that is where no other will ſue; will you ſay any Thing elſe? And then he ſhewed an Amerciament and Fine, and alſo an ancient Recovery of the ſame Tenements, in an Action tried at Common Law. *Jedd.* Seeing by this ancient Fine and Recovery, the Tenements are become Franckfee, and pleadable here; *Quære*, if they ſhould now be received, to reverſe the late Fine, without ſuing to reverſe the former Fine and Recovery, which are ſtill in Force: And for that he was a Stranger to the Fine, and alſo to the Suit, and did not ſhew it *ſub pede ſigilli*, and a Writ to allow it: Therefore by *Wilby* it is no Plea; for on a *Nient compriſe* pleaded, it cannot be tried between the Parties. 26 *Ed.* 3. 66. And ſo *Note*, That a Fine of elder Date will hinder the Reverſal of a Fine of later Date by a Writ of Diſceit, but not *e converſo*. See 21 *Ed.* 3. 25, 26. acc.

(*c*) And alſo the Iſſues in the mean Time. *Mich.* 16 *Ed* 3. But not Damages. 18 *Ed.* 3. 28. And *note*; the King ſhall have the Iſſues in Diſceit, on a Recovery by Default on a *Præcipe.* 29 *Ed.* 3. 34. See 8 *H.* 6. 2. 41 *Ed* 3 2. 10 *Ed.* 3. 18. That he ſhall recover all in Damages againſt the Sheriff, ſee the Fine avoided between the Parties, for that the Court had not Juriſdiction thereof. 9 *H.* 7. 12. and 8 *Ed.* 4. 6. *per Littleton.*

And *Note*; In a Writ of Diſceit on a Fine levied of ſuch and ſuch Lands, *&c.* and Error brought in *B. R.* the Tranſcript of the Fine was removed thither: and the Court being appriſed by the Record, that the Manor (of which the Lands were alledged to be Parcel) was ——— and by the Conuſance on the Defendant's Part, or otherwiſe by Verdict, that it was Parcel of the Manor; Judgment was given that the Fine be reverſed; and yet by Force of this Proceſs, and for that other Lands were rendered by the Fine, the Fine was not taken off the Files, but only marked *quoad* thoſe Lands. 21 *Ed.* 3. 20. 17 *Ed.* 3. 31. But *note*, That he who is Tertenant ought to be made Party by the *Scire facias*; for the Conuſance of him who is Party to the Fine, ſhall not bind the Tertenant, if the Lands are (not) Ancient Demeſne. 7 *H.* 4. 44. 8 *H.* 4. 29. See alſo in Diſceit by the Queen, on a Fine levied of Lands in Ancient Demeſne; and by the Tranſcript it appears, that the Lands were rendered

[98.]

A And if a Man levy a Fine at Common Law unto another of Land which is in Ancient Demeſne, the Lord of Ancient Demeſne ſhall have a Writ of Diſceit againſt him who levied the Fine, and he who is Tenant ſhall avoid the Fine, and there he who ought to give the Land ſhall be reſtored unto his Poſſeſſion and Title which he hath given by the Fine, becauſe the Fine and Gift thereby is avoided. But if he who levieth the Fine, have after by his Deed releaſed unto him who hath the Poſſeſſion by the Fine, or by the Deed confirmed his Eſtate in the Land, then he unto whom the Releaſe or Confirmation is made, ſhall have and keep the Land notwithſtanding that the Fine be avoided, becauſe that Releaſe or Confirmation made unto him being in Poſſeſſion, hath made his Eſtate firm and rightful, againſt him and his Heirs who releaſed or confirmed the ſame.

35 H. 6. 46. 8Ed.4 6.cont. Where a Man loſeth by Præcipe in Capite, where he ought to have ſued in the Lord's Court, and the Lord brought Diſceit for the Profits of the Court.

B If a Man do recover in a Writ of Waſte where the Tenant was not ſummoned, *&c.* the Defendant ſhall have a Writ of Diſceit, and ſhall be reſtored. *T.* 9 *Ed.* 3. See 17 *Ed.* 3. 58. 29 *Ed.* 3. 42. 29 *Ed.* 3. *Diſceit* 63 and 56.

48 Ed. 3. 20. 17 Ed. 3. 18. 20 Ed. 2. Diſceit 5. ac.

C If Huſband and Wife loſe the Land of the Wife by Default, they may ſue a Writ of Diſceit, and if the Huſband dieth, it ſeemeth the Wife may ſue a Writ of Diſceit to be reſtored to her Land, *&c.* or have a *Cui in vita* upon the Statute at her Election; and the Writ of Diſceit ſhall be directed unto the ſame Sheriff who did the Diſceit, and falſe Return, and not upon the Coroners, as appeareth *Trin.* 20 *Ed.* 3. Yet it ſeemeth it is not Error, if it be directed unto the Coroners, *&c.* 20 *Ed.* 3. *Diſceit* 4.

19 Ed. 3. Diſceit 3. 19 Ed. 2. Diſceit 56. 20 Ed. 3. Diſceit 4. he ſhall not have Diſceit, by Wilby. Hill. cont.

D (*a*) And in a Writ of Diſceit, if the Sheriff return one Summoner dead, yet the other Summoner ſhall be examined, *&c.* And if it be found that he did not ſummon, *&c.* the Party ſhall be reſtored unto the Land, and ſo if one Viewer or Pernor did not do that which he ought to do, the Party ſhall be reſtored, becauſe it ought to be done by both, *&c.* But if Summons be by four Men, as long as two of them are alive, the Tenant who loſt may have a Writ of Diſceit.

20 Ed. 3. Diſceit 5. 8 H. 6. 1. 18 Ed. 4. 1.

E And a Writ of Diſceit lieth againſt him who imbezileth a Writ, and alſo againſt him who procureth another to imbezil a Writ, if it be imbeziled, *&c.* and they may be joined in the ſame Writ. See 19 *H.* 6. 29, 50, 72. 9 *H.* 6. 5. 8 *H.* 6. 20, 50.

19 H. 6. 29, 50, 71.

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rendered in Tail to *A.* Remainder to *B.* in Tail, *&c.* and a *Scire facias* ſued againſt the Tertenants (which ſeem to have been the Iſſue of *B.* in Tail, but was not ſo ſuppoſed by the Writ) who acknowledge the Lands (except eight Acres which were Frank-fee); and *Thirning* would not avoid the Fine, till thoſe in Remainder were made Parties by *Scire facias.* 21 *Ed.* 3. 56. But it is ſufficient if the Tertenant only be made Party to the Writ. 16 *Ed.* 3. 66. *Note*; By the Caſe aforeſaid, it appears it is in the Plaintiff's Election to bring a Writ of Diſceit againſt the Conuſor of the Fine and the Tertenant, or otherwiſe to bring it againſt the Conuſor alone, and to have a *Scire facias* againſt the Tertenants; *quod Nota*; and ſo it is in Diſceit on a Recovery for Non-ſummons, *&c.* See 38 *Ed.* 3. 1. See 1 *Lutw.* 712. 18 *Ed.* 4. 6. 36 *H.* 6. 34. *contr.* 17 *Ed.* 3. 31. *contr.* See 10 *Co.* 50. *a.* 2 *R.* 3. 21. 15 *H.* 7. 12.

(*a*) So in Waſte, where the Writ iſſued to the Sheriff who found the Waſte, by *Diſceit.* 30 *Ed.* 3. *Diſceit* 5. See 8 *H.* 6. 2. 8 *Ed.* 3. 6. 8 *H.* 6. 5. 35 *H.* 6. 46.

And

20 H. 6. 34. And if a Man doth bargain with another to infeoff him (*a*) of certain Lands, F
16 Ed. 4. 9. and afterwards he infeoffeth another Man, he with whom he made the Bargain
ſhall have a Writ of Diſceit (*b*).

26 H. 6. Diſceit 15. (*c*) And if a Man do recover in a *Quare impedit* by Default, *&c.* if the Defendant G
27 H. 6. 5. be not ſummoned, he ſhall have this Writ, and the Summoners and
vide 34 Ed. 3. Pledges upon Attachment ſhall be examined thereupon: And if the Deceit
Diſceit 57. be found, he ſhall have Writ unto the Biſhop, *&c.* for him.

Neither the Clerk nor the Def. ouſted. If an Action of Debt be brought againſt two as Executors, where one of H
them is not Executor, if he who is not Executor confeſs the Action, he who
9 Ed. 4. 33. is Executor ſhall have a (*d*) Diſceit againſt him, and recover as much in Da-
Lit. acc. mages.

If an Attorney be not informed by his Client to plead in any Action, and I
he plead, *That he is not truly informed, and therefore can give no Anſwer*, &c.
10 Ed. 4. 9. the ſame ſhall be entered to ſave him of Damages in a Writ of Diſceit brought
againſt him by his Maſter, *&c.*

11 Ed. 4. 6. If a Man ſell Cloths, and warrant them to be of a certain (*e*) Length, if K
5 H. 7. 41. they be not of ſuch Length, he who bought them ſhall have a Writ of Diſ-
ceit againſt him upon his Warranty, although the Warranty be only by Word;
but if the Warranty be made at another Time after the Bargain made, then it
ought to be in Writing, otherwiſe he ſhall not have an Action upon that
Warranty; for he ſhall not have an Action of Diſceit therefore, if the War-
ranty be not made upon the Bargain and at the Time of the Bargain.

9 Ed. 5. 7. The Writ of Diſceit ought to be brought into the County where the Diſceit L
is ſuppoſed to be done.

8 Ed. 4. 6. If a Man recover in a *Præcipe in Capite* by Default, where the Lands are M
not holden of the King, nor he hath not the Lord's Licence to ſue in the
Common Pleas, the Lord ſhall have a Writ of Diſceit, and (*f*) recover Da-
mages; but the Recovery ſhall ſtand in Force, and the Lord ſhall have the
Seigniory, and he who recovered ſhall alſo hold over the King by way of
Eſtoppel (*g*).

(*a*) So if he grant a Rent-charge, or acknowledges a Statute, and after re enfeoffs according to an Agreement; or if he makes a Feoffment to another, and after re enters and infeoffs another, and the firſt Feoffee enters. 20 *H* 6. 34, 35. *Note* here, it was a Bargain without a Deed.

(*b*) See 16 *Ed.* 4. 9. 3 *H.* 7. 14. 21 *H.* 7. 41.

(*c*) But where the King recovers, the Party muſt ſue by Petition to the King; and if he anſwers, *Let Right be done*, he ſhall have a Writ of Diſceit; and if he anſwers, *Let the Diſceit be examined*, then on that Indorſement they may proceed, but without Writ. 10 *H.* 4. 4. See 27 *H.* 6. 5. 26 *H.* 8. 34. 34 *Ed.* 1. *Diſceit* 17.

(*d*) See 9 *Ed.* 4. 13. 21 *Ed.* 4. 24. 48 *Ed.* 3. 25. 11 *H.* 4. 84. 20 *Ed.* 4. 9, 51.

(*e*) Becauſe it cannot be tried but by parol Proof; ſo if one warrants Wares to be of ſuch Weight, *&c.* if found not to be of ſuch Weight, *&c.* at the Time of the Waranty. 11 *Ed.* 4. 6. 13 *H.* 4. 1. and ſee by *Hankſ.* 13 *H.* 4. 1. and *Choke* 11 *Ed.* 4. 16. If the Vendor warrants a Horſe to be ſound, where he has a Defect that is apparent to the Senſes, Diſceit does not lie; *contra* by *Thirning*, if the Horſe be not there preſent

(*f*) But he ſhall not recover Damages as for Loſs of a Seigniory or Court; for the Seigniory remains, and the Loſs of the Court is only *pro hac vice.* 17 *Ed.* 3. 31, 37.

(*g*) See a Writ upon this Caſe, 17 *Ed.* 3. 59. *Quære* 10 *Ed.* 4. 6, 37.

N If a Man procure another to ſue an Action againſt me to trouble me, I ſhall have a Writ of Diſceit. 1 Salk. 14, 15. 3 Cro. 378.

O A Writ of Diſceit ſhall be maintainable againſt the Attorney and the Sheriff, becauſe they put a Writ of *Habere facias ſeiſinam* upon the File of the Sheriff's Writ, where they have not any Record to warrant it. See 17 *Ed.* 3. 51. 2 Inſt. 2, 215.

P If a Man levy a Fine of Land in Ancient Demeſne, and alſo of Land at the Common Law, the Party ſhall have a Writ of Diſceit for the Ancient Demeſne Land, and ſhall avoid the Fine for that Land, and the Fine ſhall ſtand good for the Land at the Common Law (*a*). 21 Ed. 3. 20. 5 Ed. 4. 6. 17 Ed. 3. 31. Diſceit 37.

Q If a Man loſe Land by Default in a *Præcipe quod reddat*, (*b*) and dieth, his Heir ſhall have a Writ of Diſceit as well as the Father, and ſhall have Reſtitution.

R If a Man have Execution by Default upon a Recognizance in a *Scire facias* ſued out againſt another, and the Defendant dieth, his Executors ſhall have a Writ of Diſceit, and ſhall be reſtored, *&c.* If the Diſceit be found that their Teſtator was not warned, there the Garniſhers ſhall be examined, *&c.* 15 Ed. 3. Diſceit 43. 18 H. 2. ib. 50. Poſt. 99. H.

S And if a Man recover an Annuity, and afterwards ſueth a *Scire facias*, and recovereth by Default, the Defendant ſhall have a Writ of Diſceit, if he were not warned. 18 Ed. 3. Diſceit 42. [99.]

A And the Vouchee ſhall have a Writ of Diſceit where he loſeth by Default, if he were not ſummoned, *&c.* *Poſt.* 106. 3 & 4 Ed. 3. Diſceit 45.

B In a *Præcipe quod reddat* againſt the Huſband and the Wife at the Grand Cape, the Huſband appeareth in Perſon, and the Wife appeareth by Attorney, who hath a Warrant which is inſufficient, by which Judgment is given upon the Default of the Wife againſt the Huſband and Wife, *&c.* yet they ſhall have a Writ of Diſceit, if they were not ſummoned, *&c.* 18 Ed. 2. Diſceit 54, 55.

C And where a Man loſeth by Default in a *Quare impedit*, or Waſte, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manucaptors upon the Diſtreſs, ſhall be examined, when the Writ of Diſceit is brought therefore. See in the Title of *Diſceit* in the Abridgments for that Matter. 29 *Ed.* 3. 42. 19 Ed. 2. Diſceit 56.

D If a Man ſue a Writ of *Monſtravit* againſt another to account, *&c.* where he hath ſufficient Lands in another County, by which he may be brought to anſwer by Writ of Account, the Defendant ſhall have a Writ of Diſceit againſt the Plaintiff who ſueth the *Monſtravit*, *quod vide Mich.* 9 *Ed.* 2. *Fitz. Diſceit* 52.

E If Tenant for Life loſeth by Default, where he was not ſummoned, and dieth; he in the Reverſion ſhall not have a Writ of Diſceit, becauſe he ſhall not have a Writ of Error, if not by the Statute, *&c.* So 8 *Ed.* 3. 6. *per Parning*, clearly. Dyer 241. b. 8 Ed. 3. 6, 52.

(*a*) See 7 *H.* 4. 44. 17 *Ed.* 3. 31. 21 *Ed.* 3. 20.

(*b*) And the Parol ſhall not demur for Nonage of the Demandant, if a Deed of the Anceſtor be not pleaded. 17 *Ed.* 3. 59, *&c.* 8 *Ed.* 3. 6. 18 *R.* 2. *Diſceit* 30 & 50. 15 *Ed.* 3. *Diſceit* 43. 8 *Ed.* 3. 62, 52. 8 *H.* 6. 2. 15 *Ed.* 3. *Diſceit* 45.

1 Ed. 3. 5. So of Leſſee of Years. If a Man be Tenant for Life of a Manor in Ancient Demeſne, and the Tenant of that Manor doth levy a Fine of his Land at the Common Law, the Lord of the Manor who is Tenant for Term of Life ſhould have a Writ of Diſceit, and after his Deceaſe, he in the Reverſion ſhall have a Writ of Diſceit, and reverſe that Fine. 17 *Ed.* 3. 58. *vide ſupra* B.

F 10 H. 4. 4. If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* againſt another Man by Default, the Tenant ſhall have a Writ of Diſceit, as well as he ſhall have Writ of Error, where the King recovereth by erroneous Proceſs, *&c.* or erroneous Judgment. See for this Matter *M.* 10 *H.* 4. in Title *Traverſe* in the Abridgments.

G 22 Ed. 3. Diſceit. And this Writ of Diſceit ſhall ſometimes iſſue out of the Common Pleas (*a*), or he may ſue it out of the Chancery, if he will; as if a Man loſe Lands by Default in a *Præcipe quod reddat* in the Common Pleas, the Tenant, if he were not ſummoned, ſhall have a Writ of Diſceit out of the Common Pleas, if he will, or out of the Chancery. *Vide ante* 98. R.

H 17 Ed. 3. 51. Diſceit 39. And ſo if a Man have Execution upon a Recognizance in the Common Pleas or King's Bench by Default, *&c.* the Defendant ſhall have a Writ of Diſceit, if he were not ſummoned out of that Court where the Execution was ſued, *&c.* or out of the Chancery, at his Election.

I 17 Ed. 3. 51. Diſceit 9. And there are divers other Writs of Diſceit, in the Form of a Writ of *Audita Querela*, as if one ſue a *Præcipe quod reddat* againſt another, and the Tenant is eſſoined at *Quind' Paſch'*, which Eſſoin is adjourned until 15 *Trin.* the Term (*b*) following, and the Demandant and his Attorney by Covin betwixt them recovered a Writ in the File of Writs, that the Tenant hath made *N.* and *M.* his Attornies jointly and ſeverally at the ſaid *Quind' Paſch'*, by which the Demandant challengeth that Eſſoin, becauſe he had Attorney in the Writ not eſſoined, by which at the Day of Adjournment the Eſſoin is quaſhed, and the Demandant recovereth the Land by this Default at *Quind' Paſch'*. Now the Tenant ſhall have a Writ of Diſceit againſt the Demandant and his Attorney, and the Form of the Writ ſhall be in the Nature of *Audita Querela*, and ſhall be directed unto the Juſtices of the Common Pleas, and is ſuch:

The King to his Juſtices of the Bench, greeting: I. *of* B. *hath ſhewed unto us, that whereas* W. *of* B. *lately impleaded him the ſaid* I. *before you in the Bench aforeſaid by our Writ, of one Meſſuage,* &c. *in* B. *and hath proceeded to the Taking of the proper Inqueſt, and Day was given to the Parties from* Eaſter *Day in fifteen Days laſt paſt, at which Day he the ſaid* I. *cauſed himſelf to be eſſoined, and that Eſſoin was adjourned until fifteen Days of the Holy Trinity then next following, and the aforeſaid* W. *and* P. *his Attorney, by Colluſion before had between them, contriving to diſinherit the aforeſaid* I. *of the Tenement aforeſaid, recorded* S. *of* T. *Servant of the ſaid* W. *of* B. *and* W. *of* P. *Attorneys for him the ſaid* I. *and cauſed a Writ of Attorney to be put in the Files of Writs, and a certain Challenge of the abovesaid Eſſoin, in fifteen Days of* Eaſter, *in the Bench aforeſaid, he the ſaid* I. *being wholly ignorant of the Day, and that becauſe the*

(*a*) *Note* 3 Levin. 419. 22 Ed. 3. 11. contra. Vide ibid. 51.

(*b*) See Diſceit againſt one who caſt an Eſſoin of the King's Service, and the Tenant. 12 H. 4. 24.

aforeſaid I. *who had his Attorney in the ſame Plea, did not aſſert the aforeſaid Eſſoin to be caſt, that at the ſaid fifteen Days of the Holy Trinity Seiſin of the Tenement aforeſaid ſtood adjudged to the ſame* W. *of* B. *by the Conſideration of the Court, becauſe the Attorney of the aforeſaid* I. *was not eſſoined at the ſaid fifteen Days of* Eaſter, *in Deceit of our Court aforeſaid, and to the great Damage and manifeſt Diſheriſon of the ſaid* I. *whereupon the ſame* I. *hath beſought us by his Petition exhibited before us and our Council in our Parliament, that we will provide him a Remedy in this Behalf, and becauſe the aforeſaid* W. *of* B. *ſpeaking before you in the Bench aforeſaid touching the Premiſſes in this Behalf, hath acknowledged theſe Things, as it is ſaid: We command you, that having heard the Complaint of him the ſaid* I. *upon the Premiſſes, and having called before you as well the aforeſaid* W. *of* B. *and* W. *of* P. *as* S. *of* F. *and having heard ſeverally their Reaſons thereupon, if it ſhall appear to you, by Inqueſt thereon to be taken, or by the Acknowledgment of them the ſaid* W. W. *and* S. *or any of them, that* I. *hath loſt his Tenement aforeſaid by the Colluſion aforeſaid, as it is ſaid, then that you cauſe to be done, as of Right ſhall be done, compleat Juſtice, as well for us as the aforeſaid* I. *as well touching the Deceit and Colluſion aforeſaid, as touching the Recovery to be had of the Tenement aforeſaid. Witneſs*, &c.

K If a Notary or other Perſon of Covin counterfeit the Seal of any Parſon or Vicar, and forge Letters of Reſignation of his Parſonage or Vicarage, in the Name of the Parſon or Vicar of his Benefice, he ſhall thereupon have a Writ of Diſceit, and the Writ is in the Regiſter. But whether by that he ſhall be reſtored unto his Benefice, *quære*; it ſeemeth not, becauſe the Removing of him is a ſpiritual Act. [100.]

A If two ſeveral Men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto another one hundred Pounds in the Name of another Man, affirming him to be ſuch a Perſon, which in Truth he is not; for which the other Perſon is troubled, and ſued upon the Statute, and taken in Execution, *&c.* he ſhall have a Writ of Diſceit againſt the two Perſons, *&c.* and ſhall recover Damages againſt them.

B And ſo if a Man be bounden unto a Prior by a Statute-merchant in forty Pounds, to be paid at a certain Day, at which Day he payeth the Money unto the Prior, *&c.* and afterwards another Perſon in the Prior's Name cauſe the Statute to be certified in the Chancery, and ſue Execution thereupon, the Prior not knowing thereof, he who was bounden, and hath paid the Money, ſhall have a Writ of Diſceit againſt the Prior and thoſe who ſued the Execution in his Name.

C If the Eſcheator, by Virtue of a Writ directed to him (*a*) doth ſeiſe into the King's Hands the Lands of any Perſon who holdeth of the King in Chief, by which the King commits the Wardſhip of thoſe Lands unto another, who grants them over unto another during the Nonage of the Heir: Now if the Eſcheator.

(*a*) See 9 *H* 6. 6 an Office found before the Eſcheator *virtute brevis:* That one *A* died ſeiſed of the Moiety of the Manor of *D* and that *B* is his Heir, and the Eſcheator returns the Office, that *A* died ſeiſed of the whole Manor; and held, 1. That *B* may have an Action on the Caſe againſt the Eſcheator for this falſe Return; for the Commiſſion does not make him a Judge, he is only an Officer. But an Action on the Caſe does not lie againſt a Judge of Record. 2 Seeing the Office found him ſeiſed of a Moiety only, his Returning that he died ſeiſed of the Whole, is ſufficient to give the Action: And yet if the King has a Moiety, he ſhall have the Whole.

Under Eſcheator of his own Authority return another Officer without Inqueſt, *&c.* and diſturbeth the Poſſeſſion of the ſecond Grantee, the ſecond Grantee ſhall have a Writ of Diſceit againſt the Under Eſcheator: And ſo if the Eſcheator of his own Athority have ſo done without taking any Inqueſt, *&c.* according to the Courſe of the Law; and theſe Writs are in the Regiſter.

And thereby it appeareth, that an Eſcheator may have an Under Eſcheator as well as the Sheriff may have an Under Sheriff.

D And alſo it appeareth, that an Eſcheator ſhall be puniſhed, although he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Inqueſt to inquire of the ſame: And the Proceſs in the Writ of Diſceit is Attachment and *Diſtringas.*

Writ de Parco fracto.

E A Writ of *Parco fracto* lieth where a Man diſtraineth Cattle for Damage-feaſant, or for Rent or Service, and put them into the common Pound, or into another Pound or Place, which ſhall be ſaid to be a lawful Pound; and he who hath Property in the Cattle, or other Perſon taketh the Cattle out of the ſaid Pound, and driveth them where he pleaſeth: He who diſtraineth him for, *&c.* ſhall have the Writ *de Parco fracto.*

If a Man ſendeth his Servant to diſtrain for Rent or Services, and the Servant diſtraineth the Cattle, and impoundeth them, and a Stranger taketh them out of the Pound, the Maſter ſhall have the Writ *de Parco fracto*, and not the Servant, for it is the Maſter's Pound.

5 H. 7. 9. It is a Pound as well as if it were in his ſeveral. Fairf. contra. 33H.8.pl.56.

If a Man diſtrain for Rent or Services, or for Damage-feaſant, and put the Cattle in the Land or Cloſe of a Friend with his Licence, and he who owneth the Cattle taketh them out of the ſaid Cloſe, he who diſtraineth them ſhall have the Writ *de Parco fracto*, and not he whoſe Cloſe it is: For who owneth the Cloſe, ought to have an Action of *Quare clauſum fregit*, *&c.* for that it is not his Pound, but the Pound of him who diſtraineth the Cattle; and the Form of the Writ is,

F *The King to the Sheriff of* Lincolnſhire, *greeting: If* A. *&c. then put*, &c. B. *to ſhew wherefore, whereas the ſaid* A. *took certain Beaſts in his Damage at* N. (or thus, *the Beaſts of the aforeſaid* B.) *and impounded them there, according to the Law and Cuſtom of our Realm, the aforeſaid* B. *with Force and Arms broke that Pound, and took and led away the Beaſts aforeſaid, and other Wrongs to him did, to the great Damage*, &c.

And note, That this Writ is *vi & armis*, and he ſhall not ſhew in the Writ what Kind of Cattle they are, nor to whom the Property of the Cattle doth appertain, if that he pleaſe not ſo to do.

G And if a Man ſend his Servant for to diſtrain for Rent or Services, or for Damage-feaſant, then the Form of the Writ is ſuch:

To ſhew wherefore, whereas the ſaid A. *cauſed a certain Ox (or certain Beaſts) to be taken in his Damage at* N. *by* B. *his Servant, and he the ſaid* B. *there impounded that Ox* (or thus, *thoſe Beaſts*) *according to the Law and Cuſtom of our Realm of* England, *he the ſaid* C. *with Force and Arms broke that Pound*, &c.

Or thus for an Abbot; *To ſhew wherefore, whereas the ſaid Abbot, in his Houſe in the Suburbs of* Lincoln, *by Friar* I. *Keeper of our Cell of Saint* Mary Magdalen *without* Lincoln, *certain Beaſts*, &c. Otherwiſe for a Default in the Lord's Court; *Wherefore, whereas the ſaid* A. *in his Fee at* N. *cauſed to be taken by his Servant the Beaſts of the aforeſaid* B. *for a certain Default which the ſame* B. *made in the Court of him the ſaid* A. *againſt* E. *in a Plaint which was in the ſame Court between*, &c. *by Conſideration of the ſaid Court, and the ſaid* A. *impounded thoſe Beaſts according to*, &c. *the aforeſaid* B. *with Force and Arms*, &c.

H If a Man do diſtrain for Amercement in a Hundred, and impound the Cattle, and the other taketh them out, the Writ ſhall be,

Wherefore, whereas the ſaid A. *by* B. *and* C. *his Bailiffs of the Hundred of* N. *cauſed to be taken certain labouring Beaſts of him the ſaid* F. *at* S. *within the Precinct of the Hundred aforeſaid for a certain Amercement, in which the ſaid* F. *was amerced in the ſame Hundred, to be levied to the Uſe of the ſaid* A. *and the ſaid* B. *and* C. *impounded theſe Beaſts*, &c.

And in this Writ he ought to ſhew, that the Property of the Cattle were 41 Ed. 3. 26.
in him who was amerced, becauſe he cannot diſtrain the Cattle of other Men 47 Ed. 3. 13.
for this Amercement; but for Rent or Service it is otherwiſe. For the Party 12 H. 6. 15.
may diſtrain the Cattle there levant and couchant upon the Lands (*a*). [101.]

If the Queen do diſtrain for a Debt or Amercement due unto her, and impound the Cattle, and a Stranger doth break the Pound, and take them out, then ſhe ſhall have a Writ, and the Writ ſhall be ſuch:

The King to the Sheriff of S. *greeting: Put by Gages*, &c. P. *of* E. *and* C. *of* D. *that they be*, &c. *to anſwer as well to us as* Ann *Queen of* England, *wherefore, whereas* W. *of* R. *Bailiff of the Liberty of the ſaid Queen of the Hundred of* C. *(in which the ſaid Queen, as in the reſt of her Lands and Tenements granted to her by us, hath the Return of all our Writs, as belongs to the ſaid* W. *by reaſon of his Office) by Virtue of the Return of a certain Writ made by him for you within the Liberty aforeſaid for a certain Debt, to be levied to the Uſe of the ſaid Queen upon the ſaid* P. *by Summons of our Exchequer, took the Beaſts of the ſaid* P. *at* B. *and impounded them there, according to the Law and Cuſtom of our Realm, the aforeſaid* P. *and* C. *with Force and Arms broke that Pound, and took and led away the aforeſaid Beaſts, and committed other Wrongs there, in Contempt of us, and to the great Damage of the ſaid Queen, and againſt our Peace*, &c.

A And when the King ſueth any Writ, the Writ ſhall not ſay, *&c. Si* Georgius 18 Ed. 3. 21.
Rex Mag' Brit' *fecerit te ſecur'*, *&c.* for he ſhall not (*b*) find Sureties as Lit. 133.
a common Perſon ſhall do, for he ſhall not be amerced, as appeareth by the Writ before.

B If the Huſband do diſtrain for Rent or Services which he hath in Right of 15 Ed. 4. 9.
his Wife, and a Stranger taketh them out of the Pound, the Huſband ſhall have the Writ *de Parco fracto* in his own Name; but yet it ſeemeth he may ſue the ſame in his Name, and in the Name of his Wife, and join the Wife with him; *tamen quære*.

(*a*) See 10 *H.* 7. 21. 15 *H.* 7. 19. 6 *Ed.* 4. 8. *contr.* 4 *Ed.* 3. 35. *contr.*

(*b*) And ſo it is of an Infant, 3 *Aſſ.* 25.

Writ of Reſcous.

C THE Writ of Reſcous lieth where a Man doth diſtrain for Rent or Services, or for Damage-feaſant, or would impeach or impound the Cattle, and the other Party doth reſcue them, or taketh (*a*) them from him, then he ſhall have this Writ of Reſcous; and the Writ is ſuch:

D *The King to the Sheriff*, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. *to ſhew wherefore, whereas he the ſaid* A. *took in his Fee at* S. *certain Beaſts*; or thus, *certain Beaſts of the ſaid* B. *and would have impounded them there according to the Law and Cuſtom of our Realm of* England, *the aforeſaid* B. *with Force and Arms reſcued the Beaſts aforeſaid*, (*b*) *and other Wrongs*, &c. Or thus; *Wherefore, whereas the ſaid* A. *cauſed to be taken certain Beaſts by* C. *his Servant in his Fee at* S. *for Cuſtoms and Services due to him*; or thus, *cauſed to be taken a certain Cart of him the ſaid* B. *and the ſaid* C. *would have carried that Cart unto the Manor of the ſaid* A. *of* S. *according to*, &c. *the ſaid* B. *with Force and Arms made an Aſſault upon him the ſaid* C. *and the ſaid Cart*, &c. *took away from him*, &c.

And ſo it appeareth he may join in a Writ of Reſcous for the Aſſault and Battery of his Servant.

E And if he do diſtrain Cattle, and other dead Chattels, then the Writ ſhall be,

To ſhew wherefore, whereas he the ſaid A. *took the Beaſts and Chattels of the aforeſaid* B *in his Fee at* S. *for Cuſtoms and Services due to him, and would have impounded thoſe Beaſts, and detained the Chattels aforeſaid in the Name of a Diſtreſs, according to the Law and Cuſtom of our Realm of* England, *the ſaid* C. (*c*) *reſcued thoſe Beaſts, and took away from him the ſaid* A. *the Chattels aforeſaid, and other Wrongs*, &c.

And if he do diſtrain for a Rent-charge, the Writ is ſuch:

Wherefore, whereas he the ſaid A. *in a certain Tenement of him the ſaid* B. *at* N. *bound for a certain yearly Rent by the Writing of him the ſaid* B. *charged with the Diſtreſs of the ſaid* A. *took certain Chattels of the ſaid* B. *for the Rent aforeſaid, being in Arrear, and would have there detained them in the Name of a Diſtreſs, according to the Law*, &c. *the aforeſaid* B. *took away from him the Chattels aforeſaid*, &c.

F And note, That if a Man ſend his Servant to diſtrain for Rent or Service, or Damage-feaſant, and Reſcous be made upon the Servant, the Maſter ſhall have the Writ of Reſcous, and not the Servant; for the Wrong is done unto him who ought to have the Rent or Service, or is damnified, *&c.*

If a Collector or Sub-collector diſtrain for Fifteens, and Reſcous be made, he ſhall have the Writ of Reſcous; and the Writ ſhall be ſuch:

G *If* W. *of* S. *the Sub-collector of the Tenths of the Town of* S. *laſt granted to us by the Citizens and Burgeſſes of our Realm*, &c. *ſhall make you ſecure*, &c.

(*a*) *Note*; One may have one Writ of Reſcous for reſcuing of ſeveral Diſtreſſes taken for ſeveral Tenures. 3 *H.* 6. 52. adjudged.

(*b*) *Note*; He ought to count for what Rent or Services, *&c.* he took them, and therefore he ought to count of the Terms of Payment. 8 *H.* 4. 1. *Raſt. Entr.* 580.

(*c*) Without ſhewing in what Place the Reſcue was, for it ſhall be intended in the Place where taken 30 *Ed* 3. 15. But it ſhall be ſhewn in the Count. 10 *Ed.* 4. 15.

then put, B. *&c. to anſwer as well to us as the aforeſaid* W. *wherefore, whereas the ſame* W. *took certain Chattels of him the ſaid* B. *for a certain Sum of Money aſſeſſed upon Account of the Tenths aforeſaid, and in our Name would have detained thoſe Chattels in the Name of a Diſtreſs, the aforeſaid* B. *there aſſaulted the ſaid* W. *and beat him, and took away from him thoſe Chattels*, &c. *and other Wrongs*, &c. *in Contempt and Prejudice of us, and to the great Damage of the ſaid* W. *and againſt our Peace*, &c.

And if the Bailiffs or Officers do arreſt certain Perſons, and others reſcue them from the Officers, then he who cauſed them to be arreſted, ſhall have the Writ of Reſcous; and the Writ ſhall be ſuch:

Wherefore, whereas the ſaid Prior by the Charter of Lord Edward, *&c. which we have inſpected, ought to have at* W. *his free Court of all his Men, as well Burgeſſes as others, and of all Pleas and Plaints and Attachments whatſoever happening, together with Prizes and all other Things belonging to his Men; and the ſame Prior cauſed to be attached by* B. *his Bailiff at* F. R. *and* M. *the Men of him the ſaid Prior, for divers Treſpaſſes by them done at* T. *within the Liberty of the aforeſaid Prior (as it is ſaid) againſt our Peace, whereupon Hue and Cry was there levied, and the ſaid Prior would, according to Law and Cuſtom, have there detained them the ſaid* R. *and* M. *to undergo Juſtice in this Behalf in the Court of the ſaid Prior, the aforeſaid* B. *and* L. *with Force and Arms took the aforeſaid* R. *and* M. *not juſtified concerning the ſaid Treſpaſſes, out of the Cuſtody of him the ſaid* B. *and permitted them to go where they would, and other Wrongs*, &c. *to the great Damage of him the ſaid Prior, and to the manifeſt Hurt of his Liberty, and againſt our Peace*, &c.

And note, That if the Bailiff or Sheriff, or other Officer of the King, do arreſt a Man, or diſtrain him for Debt, or other Service due to the King, and Reſcous is made, then the Bailiff or other Officer ſhall have the Writ of Reſcous in his own Name, and not the King's, and the Writ ſhall be ſuch: Infra G.

If T. *Bailiff of the Hundred of* F. *ſhall make you ſecure*, &c. *then put*, &c. *to anſwer as well to us as the aforeſaid Bailiff wherefore, whereas the ſame Bailiff, according to the Duty of his Office, took* W. *(whom we commanded to be taken by our Sheriff of the County aforeſaid by our Writ of Judgment to him directed) at* K. *by Virtue of our Mandate aforeſaid, and would have led him unto our Caſtle of* R. *there to remain in our Priſon, the aforeſaid* R. *and* S. *with Force and Arms reſcued him the ſaid* W. *at the Town of* K. *and other Wrongs*, &c. *in Contempt of us, and to the great Damage of the aforeſaid Bailiff, and againſt our Peace: And have*, &c.

A And if the Bailiff would arreſt any Perſon, and he himſelf do reſcue himſelf, and will not obey the Arreſt, then the Writ ſhall be ſuch:

If H. *of* R. *Bailiff of our Town of* S. *ſhall make you ſecure*, &c. *then put* B. *&c. wherefore, whereas he the ſaid* H. *according to the Duty of his Office, attached the aforeſaid* B. *for a certain Hue and Cry levied upon him by* W. *of* S. *at* C. *on the Complaint of the aforeſaid* W. *according to the Law and Cuſtom of our Realm; the aforeſaid* B. *not permitting himſelf to be juſticed, with Force and Arms broke the Attachment aforeſaid, and there made an Aſſault upon him the ſaid* H. *&c.*

B And if the Sheriff ſend unto the Bailiff of the Liberty to levy Fines and Amercements for the King, and the Bailiff diſtrain certain Cattle, and the Reſcous is made: Now the Lord of the Liberty ſhall have a Writ of Reſcous of the Reſcous done to the Bailiff, and for the Battery and Aſſault made upon him, and for the Loſs of his Service, and all in one Writ.

Poſt. G. If the King's Bailiff do diſtrain for Rent, and Reſcous is made, the Bailiff C ſhall have the Writ of Reſcous, and not the King.

And if a Man ſue forth an Execution, and hath a *Capias* directed to the Sheriff to arreſt the Party, and the Sheriff make his Warrant to the Bailiff of the King's Liberty where the Party dwelleth, to arreſt him, by which the Bailiff doth (*a*) arreſt him, and others do reſcue him from the Bailiff, he who ſued forth the Writ of Execution, ſhall have the Writ of Reſcous againſt him that reſcued him, as appeareth by the Regiſter; but yet it ſeems reaſonable that the Bailiff have a Writ of Reſcous in ſuch Caſe; for ſome ſay the Bailiff ſhall be chargeable to him, who ſued forth the *Capias*, *&c.* and for the Arreſt: *Tamen quære.*

And it appeareth by the Regiſter, That if a Writ be directed unto the Sheriff, D to levy the Expences of the Knights at the Parliament, and the Sheriff make his Warrant unto the Bailiff of the Liberty of the Biſhop of *Ely*, to levy the Sum aſſeſſed, *&c.* for which the Bailiff by his under Bailiff doth take certain Cattle and would impound them, and other Perſons do reſcue the Cattle and beat the Under-Bailiff, that the Bailiff ſhall have the Writ of Reſcous againſt them; and there it ſeemeth that the Knights which ſhould have the Money, ſhall not have a Writ of Reſcous for the ſame Reſcous, becauſe it is not a Duty unto them by any Perſon certain, but to be levied of the Inhabitants of the Towns. 39 Ed. 3. 35.

And if the Lord do diſtrain his Tenant's Cattle, and a Stranger's Cattle, E for Rent or Service behind, when there is not any Rent or Service behind, the Stranger may reſcue his own Cattle, but not the Tenant's, as it ſeemeth. And that as it ſeemeth by the Statute of *Marlbridge*, *cap.* 3. which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the Opinion of *Thorpe M.* 31 *Ed.* 3. is contrary; for he ſaith, the Stranger may reſcue as well the Tenant's Cattle as his own. *Quære.* (*b*)

Vi. Lit. 52. 9 H. 7. 4. And Reſcous is not, but where he hath the Poſſeſſion of the Cattle, or the F Thing of which the Reſcous is ſuppoſed to be made: For if a Man come to arreſt a Man, or to diſtrain, and he is diſturbed to do the ſame, he ſhall not have a Writ of Reſcous, but an Action on the Caſe. (*c*)

And the King ſhall not have the Writ for a Reſcous done to his Officer, G *qd' vide P.* 20 *Ed.* 3. but he may cauſe him to be indicted for the ſame. *Vid. ſupra* C.

(*a*) *Note*; The Sheriff may return a Reſcue, and at that Return the Party may have his Anſwer. 3 *H.* 7. 11. *Dyer* 212. and *Weſtm.* 2. *c.* 40. And yet if the Reſcous be at any Time after the Arreſt, the Sheriff ſhall be charged in Debt on an Eſcape, if it were not made by the King's Enemies; and the Sheriff ſhall have his Remedy over by Action on the Caſe. *Dyer* 241.

(*b*) And note 4 *Ed.* 6. *Diſtreſs* 74. *contr.* See 6 *Ed* 4 11. 5 *Ed.* 4. 10, 11. 19 *H.* 7. 48 *Ed.* 3. 33. 3 *H.* 4. 22. 22 *H.* 6. 37. *contra.* 29 *Ed.* 3. 35. 4 *Co.* 11. *b.* *Bevill*'s Caſe.

(*c*) See 21 *H.* 7. 40. 44 *Ed.* 20.

Audita Querela.

H THIS (*a*) Writ of *Audita Querela* lieth as well upon Matter in Fact, as upon Matter in Writing, as after appears. And this Writ ſhall be directed unto the Juſtices of the Common Pleas or King's Bench, and lieth where *A.* and *B.* come before the Mayor, *&c.* and *B.* doth acknowledge himſelf to be bounden in one hundred Pounds to *A.* in the Name of *C.* before the Mayor, and affirmeth his Name is *C.* and afterwards *C.* is arreſted by Force of this Bond and Statute, and taken in Execution: Now *C.* ſhall have *Audita Querela* againſt *A.* and *B.* and the Form is ſuch:

The King to his Juſtices of the Bench, greeting: We have received the Complaint of C. *containing that* A. *and* B. *by Colluſion before had between them at* W. *contriving craftily to delude our Court, and to oppreſs the aforeſaid* C. *lately appearing before* C. *Mayor of our Town of* Southampton, *and* R. *Clerk, deputed to take Recognizance of Debts at* S. *aſſerted upon Corporal Oath, that he the ſaid* C. *was preſent to perform this, by which he the ſaid* B. *under the Name of the ſaid* C. *acknowledged himſelf to owe to the aforeſaid* A. *one hundred Pounds, to be paid at a certain Time now paſt, before the ſaid Mayor and Clerk, according to the Form of the Statute for Merchants lately ſet forth at* Acton Burnel, *and afterwards him the ſaid* C. *becauſe he paid not the ſaid one hundred Pounds to the ſaid* A. *at the Time aforeſaid, falſely and maliciouſly procured to be taken by the aforeſaid Mayor, and kept ſafely in our Priſon, until he ſhould fully ſatisfy the ſaid* A. *of the ſaid one hundred Pounds, to the great Damage of him the ſaid* C. *and in manifeſt Deceit of our Court; whereupon the ſaid* C. *hath beſought us, that we will adminiſter to him a fit Remedy: We command you, that having heard the Complaints of him the ſaid* C. *in this Behalf, and having called before you the aforeſaid* A. *and* B. *and the ſaid Mayor and Clerk, and having heard the ſeveral Reaſons of the Parties thereupon, touching the Falſity, Malice and Deceit aforeſaid, you cauſe to be done to the ſaid* C. *full and ſpeedy Juſtice, as of Right and according to the Law and Cuſtom of our Realm you ſhall ſee ought to be done. Witneſs,* &c.

A If a Man leaſe Lands unto *A.* for Life, and afterwards by Fine grants the Reverſion unto *B.* in Fee, and dieth, and the Heir of the Recognizor, and one *L.* by Covin betwixt them (*b*) ſue a *Præcipe in Capite* againſt the ſaid *A.* ſuppoſing the Land to be holden of the King, whereas it is not holden of the

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(*a*) *Note* a Diverſity, where the Diſcharge comes by Determination of the Eſtate, there the Conuſor needs no *Audita Querela.* For if Tenant in Tail acknowledges a Statute, which is extended, and he dies, his Iſſue may avoid it by Entry. 38 *Aſſ.* 5. 43 *Aſſ.* 18.

(*b*) See 17 *Ed.* 3. 60. *A.* Tenant for Life, Remainder to *B.* in Tail, *C.* by Covin between him and *A.* brings a Formedon againſt *A.* and *B.* ſuppoſing them Jointenants, and one *D.* anſwers as Attorney for *B.* and Proceſs is continued until they make Default after Iſſue joined, whereupon Judgment final is given, and *B.* ſhews this, and prays that it be entred, for that it is within the Year: And it was entred on Record. 2. And alſo agreed, That he ſhall have Reſtitution; but *A.* ſhall not, for he hath forfeited his Eſtate. 3. That he ſhall not have Reſtitution on a general Bill of Diſceit, but ought to ſue an *Audita Querela* in Chancery on his Caſe, *tam ſuper Reſtitutione ten'ti quam pro deceptione punienda.* 17 Ed. 3 46. and ſo note Reſtitution at leaſt, where the Demandant was Party to the Diſceit. See 21 *Ed.* 3. 45. 19 *H.* 6. 44. 1 *H.* 4. 5. *Stat.* 21 *Jac.* 1. *cap.* — 17 *Ed.* 3. 76. *Regiſter* 114, 115.

King, but of another Perſon: And in this *Præcipe in Capite* they cauſe one *F.* to appear as Attorney for *A.* and to join the Miſe in the ſaid Writ; and afterwards the Attorney by Covin doth make Default, for which Judgment is given againſt *A.* Now upon the ſame Matter he ſhall have an *Audita Querela* directed unto the Juſtices of the Common Pleas, commanding them to proceed as well for the Reſtitution of the Land, as upon the Diſceits, and to do ſpeedy Juſtice, as of Right according unto the Cuſtom of the Realm they ought to do; and the Writ is ſuch:

The King to his Juſtices of the Bench, greeting: A. *hath ſhewed unto us, that whereas he lately held the Manor of* C. *with the Appurtenances, in the County of* L. *for the Term of his Life, of the Demiſe of* I. *and* H. *Son and Heir of the aforeſaid* I. *granted the Manor aforeſaid to have to* T. *of* S. *and the Heirs of the Body of him the ſaid* T. *iſſuing after the Death of the ſaid* A. *(as it is ſaid) by a Fine levied thereof in our Court before our Juſtices of the Bench;* B. *(Son and Heir of the aforeſaid* H.*) and* L. *by Colluſion before had between them, contriving to amove the ſaid* A. *from the Manor aforeſaid; and to exclude the aforeſaid* T. *from the Reverſion of the Manor aforeſaid, have obtained in our Chancery our Writ in the Name of the ſaid* B. *againſt the ſaid* A. *and* T. *(which is called a* Præcipe in Capite*) of the Manor aforeſaid, to our Sheriff of* Leiceſterſhire, *returnable at a certain Day now paſt, as if the ſaid Manor were holden of us in Chief, whereas it is not holden of us, and our ſaid Writ was returned by the Sheriff aforeſaid, that the ſaid* A. *and* T. *were ſummoned to be before you at the Day aforeſaid, according to the Form of the ſaid Writ, and falſely and maliciouſly procured a certain Perſon unknown, who aſſerted himſelf to be named* R. *of* S. *to appear before you in the Bench aforeſaid, as Attorney for the ſaid* A. *and* T. *to gain or loſe in the Plea aforeſaid; they the ſaid* A. *and* T. *being wholly ignorant of the obtaining the Writ, of the Summons, and of the making the Attorney aforeſaid in their Name, as is premiſed; and the ſaid Attorney appearing before you at the ſame Day, put himſelf upon our Great Aſſiſe, and prayed Recognition to be made, whether they the ſaid* A. *and* T. *had greater Right to hold the ſaid Manor with the Appurtenances, as they have holden it, or the aforeſaid* B. *to have the ſaid Manor as he hath demanded it, by which, through the Default which they the ſaid* A. *and* T. *afterwards made in the ſame Court, it was conſidered by you there, that the aforeſaid* B. *ſhould recover his Seiſin of the Manor aforeſaid with the Appurtenances againſt the aforeſaid* A. *and* T. *to hold to him the ſaid* B. *and his Heirs quiet of the ſaid* A. *and* T. *and their Heirs for ever; by Pretence of which ſaid Conſideration the aforeſaid* A. *is perpetually amoved from his Manor aforeſaid with the Appurtenances, to the great Damage of him the ſaid* A. *and the manifeſt Deceit of our Court; whereupon the aforeſaid* A. *hath beſought us to adminiſter to him a fit Remedy: We being unwilling that ſuch Colluſion, Malice and Deceit ſhould paſs unpuniſhed, command you, that having heard the Complaint of him the ſaid* A. *in this Behalf, and having called before you the aforeſaid* B. *and* L. *and others whom you ſhall ſee fit to be called in this Matter, and having heard the Reaſons of the ſeveral Parties thereupon, you further cauſe to be done full and ſpeedy Juſtice to the aforeſaid* A. (*a*) *as well upon the Reſtitution and Recovery of the ſaid Manor, as upon the Colluſion, Malice and Deceit aforeſaid,*

(*a*) See 41 *Ed.* 3. *Execution* 37. 16 *H.* 7. 16. 47 *Ed.* 3. 4. 13 *H.* 7. 22. 45 *Ed.* 3. 17.

as of Right and according to the Law and Cuſtom of our Realm you ſhall ſee ought to be done. Witneſs, &c.

And by this Writ it ſeemeth the Juſtices ought to make void the Recovery, if they find the Diſceit, *&c.* yet it ſeemeth they may not ſo do, 17 *Ed.* 3. 60. 21 *Ed.* 3. 45. 19 *H.* 6. 44.

B (*a*) If a Man be bound in a Statute-merchant, and afterwards maketh a Feoffment of Parcel of his Lands unto another Man, and of other Parcel unto another, and the Recognizee ſueth Execution upon the Statute, and hath Execution againſt one Feoffee, that Feoffee ſhall have an *Audita Querela* (*b*) againſt the other Feoffee, to ſhew Cauſe why he ſhould not have Execution of his Lands, as of the Lands which himſelf hath.

9 H. 4. 4. 32 Ed. 3. Execut. 127. 45 Ed. 3. 51. 16 Eliz. Dyer 3. 37. 4 Ed. 3. 522. & 3 Eliz.

C If a Man be bounden in a Statute-merchant, and certain Indentures of Defeaſance are made of the ſaid Statute, and afterwards the Conuſee doth arreſt the Recognizor, and impriſoneth him, and taketh the Defeaſance from him, and then ſueth Execution upon the Statute, the Recognizor ſhall have an *Audita Querela* againſt him upon the whole Matter.

Dyer 193, 194. Whaley's Caſe.

A If at the *Niſi prius* in Treſpaſs it be found for the Plaintiff, and Damages aſſeſſed, and before the Day in Bank the Plaintiff releaſe unto the Defendant all Actions and Demands, and afterwards (*c*) prayeth Judgment, and ſueth Execution thereupon; the Defendant upon that Releaſe ſhall have an *Audita Querela*.

[104.] 40 Aſſ. 23. 44 Aſſ. 15. Holt. Br. Audita Querela 43. 9 H. 5. 1. Br. Audita Querela 16. 36 H. 6. 24. 21 H. 7. 83. 3 H. 4. Br. Audita Querela 37. Fitz. Releaſe 53. Releaſe of all Actions is not ſufficient Matter to have Audita Querela.

B And the Heir of the Recognizee may ſue an *Audita Querela*, if he have Matter in Writing to diſcharge the Execution.

48 Ed. 3. 5. 15 H. 8. 5. V. 2 & 3 Eliz. Dyer 193. 43 Ed. 3. 38. Finchden.

(*a*) See 33 *Ed.* 3. *Audita Querela* 38. 11 *Ed.* 3. *Brief* 266. 29 *Ed.* 3. 7.

(*b*) See 13 *Ed.* 3. *Execution* 127. and againſt the Conuſee, and thereby he ſhall be reſtored to the Iſſues, and the Execution defeated. 45 *Ed.* 3. 17. 29 *Ed.* 3. 7. where there are two Conuſors, and the Lands of one only are delivered, who ſues a Writ to the Sheriff to deliver the Lands, *&c.* of the other in Diſcharge and Aid of the former, who returns *Non eſt inventus*, and that none came on the Part of the Conuſee; and now he prays Remedy, and has a *Scire facias* againſt the Conuſee to take his Suit againſt the other; and if the Conuſee knows not what to ſay, or does not appear, he ſhall have Execution againſt the other, or the Party ſhall be diſcharged, having Regard to his Part or Portion of the Debt. *Dyer* 193. *Gaſcoin* and *Whaley*.

If the Conuſor enfeoffs the Conuſee of Part of his Land, and his Son of the Reſidue, and dies, and the Conuſee ſues Execution againſt the Son, the Son may have an *Audita Querela*, and diſcharge the Execution *eadem Cauſa*, but no Coſts or Damages. So if the Lands of one of the Feoffees only are delivered in Execution, he may have an *Audita Querela*, and a *Scire facias* againſt the other, and it ſhall be no Plea in Abatement of the Writ, that there are other Feoffees to be contributory: For he is bound at his Peril to take Notice of all ſuch as are contributory.

Note the Diverſity: If the Conuſor of a Statute-merchant enfeoffs divers ſeverally, and the Lands of one only is taken in Execution, he ſhall have an *Audita Querela* againſt the Conuſee, to make the others contributory, and the Writ ſhall be directed to the Juſtices *de Banco*; but of a Statute Staple, it ſhall be in Chancery by *Audita Querela* directed to the Chancellor, or by a *Scire facias* directed to the Sheriff, *Quare Tenementa extenſa una cum proficuis medio Tempore, &c.* Dyer 331, 332.

(*c*) For he cannot plead this at the Day in Bank, and before Judgment he cannot have an *Audita Querela* to ſtay Judgment. 9 *H.* 5. 1.

C (*a*) If a Man be bound in a Statute-merchant or Staple, and afterwards payeth the Money according to the Statute, and hath the Statute delivered unto him, and cancelleth the ſame, and afterwards the Recognizee forgeth a new Statute in the Name of the Recognizor, the Recognizor upon the Statute cancelled ſhall have an *Audita Querela.*

43 Ed. 3. 27. cont. 12 H. 4. 6. Calp. cont.

D (*b*) If a Statute-merchant or Staple be made by one unto another, and delivered into the Hand of a Stranger to deliver upon Conditions performed, and the Stranger doth deliver the Statute before the Conditions performed, and the Conuſee ſueth Execution thereupon, the Recognizor ſhall have an *Audita Querela.*

12 H. 4. 15 and 16. Frankford.

E If a Man ſueth forth an Execution upon a Statute, and hath Execution, and afterwards grant over his Eſtate, the Recognizor ſhall have an *Audita Querela* againſt the Grantee without naming him who ſued the Execution, if he have Matter in Writing for to ſue, *&c.*

41 Ed. 3. Audita Querela 18.

F A Man may ſue an *Audita Querela* againſt the Recognizee, becauſe he hath purchaſed a Manor unto which the Recognizee is a Villain Regardant, and yet he may enter and ſeize the Recognizee without ſuch Suit.

46 Ed. 3. 28. Fulthorp. 17 Aſſ. 24. Audita Quer. 20. 10 Ed. 3. 25. Error 71. the Feoffee had Error.

G (*c*) And a Stranger who made not the Recognizance, nor was Tenant of the Land at the Time of ſuing forth of the Execution, ſhall have an *Audita*

Querela,

(*a*) *Contra*, if the Conuſor himſelf comes into Chancery, and prays a Re-extent, and it ſeems this Writ lies, if the Statute be delivered inſtead of an Acquittance, but is not cancelled. 43 *Aſſ.* 18.

(*b*) See 7 *H.* 6. 42. *A.* makes a Statute-Staple to *B.* and delivers it to *C.* to be redelivered on Condition, *&c.* *B.* recovers by an erroneous Judgment, where *A.* was warned, and the Deed is delivered to him by *C.* *B.* ſues Execution, and *A.* brings Error. Reſolved, 1. That pending the Errors and Execution, he cannot have a *Superſedeas.* 2. If *A.* reverſes the Judgment, this does not defeat the Execution had on the Statute, but it ſeems he is put to his *Audita Querela.*

(*c*) If Execution be awarded againſt the Feoffee, he ſhall have an *Audita Querela*, on a Matter of Diſcharge, made either before the Feoffment, or after. 7 *Ed.* 3. 27. *John S*—— Caſe. Where he ſhall have a Writ of Error, ſee 17 *Aſſ.* 24. *Cheſter*'s Caſe; but if the Execution be made, and after the Extent, the Conuſor makes a Feoffment, it ſeems the Conuſee ſhall not have an *Audita Querela*, on a Cauſe or Matter of Diſcharge made before; as if after the Extent, and before the Feoffment, or before the Extent, the Conuſee will acquit the Debt, and ſo ſeemed the better Opinion. *Mich.* 44, 55 *Eliz.* In Chancery in an *Audita Querela* brought by *Harden* and *Vaviſor*, and their Wives, againſt *Smith*, Executor of *Riggs*. *Moor*, Caſe 737. But on a Matter happening after the Feoffment, he ſhall have an *Audita Querela*, as on a Releaſe, *&c.* (and ſo here G.) and 17 *Aſſ.* 24. a Feme ſhall have a *Scire facias ad computand'*; and *Note*, 1. For whom it lies. 2. Againſt whom it lies. 3. When it lies. 4. The Effect of the Suit. It lies by the Grantee of a Reverſion, with Attornment, *&c.* and there he ſhall have account *ab initio.* 6 *Ed* 3. 53. *I. de Charlton*'s Caſe. 25 *Ed.* 3. 53. *John Venner*'s Caſe. So if one acknowledges a Statute, and afterwards acknowledges a ſecond Statute, the ſecond Conuſee ſhall have a *Scire facias* againſt the firſt, to receive the Monies which are to be levied, if the Tenant of the Freehold will not ſue. 38 *Ed.* 3. 12.

2. If the Conuſee has aſſigned but a Part of his Eſtate, the *Scire facias* ſhall be brought againſt the Conuſee only, and not the Leſſor; *Quære.* But if he aſſigns the Whole, and the Aſſignee levies the Whole, or the Plaintiff will pay the Reſidue, the Writ lies againſt the Aſſignee alone, and he ſhall retake (or repay) the Monies; but if he has levied the Whole and afterwards aſſigns, the Writ lies againſt both. 50 *Ed.* 3. 46, or 16. 38 *Ed.* 3. 12. 21 *Ed.* 3. 1. 46 *Ed.* 3. *Scire facias* 134. 15 *Ed.* 3. *Reſpond.* 3. But

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Querela, if he have Matter of Diſcharge in Writing. *Vide* 11 *Ed.* 3. *Litt. Aſſ.* and there it is ſaid the ſame is given by the Statute. The Feoffee ſhall not have a Writ of Error, *&c.* Nor the Feoffee of the Conuſor of Part of the Lands ſhall not have an *Audita Querela* until his Lands be taken in Execution.

H If a Man ſueth *Audita Querela* againſt the Conuſee, and ſheweth a Statute cancelled; and ſaith the ſame was delivered (*a*) to him in lieu of Acquittance, the Recognizee may ſhew the true Statute, and ſhew that the Statute ſhewed which was cancelled was a forged Statute, and thereupon he ſhall have a Writ unto the Juſtices in the Nature of *Audita Querela*, commanding them that they ſend for the Mayor and the Clerk, and for the Parties, and for to do Right; and the Examination of the Mayor and Clerk ſhall try and end the Matter; *quod vide M.* 11 *Ed.* 1.

18 Ed. 3. 36. Audita Querela 9. The Conuſor muſt ſhew the Statute, otherwiſe he ſhall not have the Plea.

I Upon a Recovery of a Debt, if he ſue a *Scire facias*, and the Sheriff return *Nihil*, by which an Execution is awarded, the Defendant ſhall have *Audita Querela*, if he have a Releaſe or Acquittance, becauſe he was not warned: But if the Sheriff hath returned him warned, he ſhall not have *Audita Querela* upon ſuch Releaſe, *&c.* becauſe he might have pleaded the ſame upon the Return of the *Scire facias* (*b*).

48 Ed. 3. 20. 12 H. 4. 4. per Hungerf. 21 Ed 3. 15. Hil. Audita Querela 18.

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one of them may anſwer without his Companion, and yet the Conuſee may releaſe, notwithſtanding the Aſſignment. *Vide ibid.* See alſo 17 *Aſſ.* 52. 9 *Ed.* 4. 13. 12 *H.* 8. 8. 18 *Ed.* 3. 25. *contr.* 17 *Aſſ. pl.* 24. *contr.* 25 *Aſſ* 8. 17 *Ed.* 3. 43. 4 *H.* 6. 72. 21 *Ed.* 3. 46. *contr.* See 17 *Ed.* 3. 49.

And *Note*; This Writ lies in Caſe of a Statute after the Debt, and Damages levied by the caſual Profits, by Courſe of Time, or by Render of the Money, and he ſhall recover his Land. See 47 *Ed.* 3. 11. 32 *Ed.* 3. *Scire facias* 101. 46 *Ed.* 3. *Scire facias* 134. *Vide Regiſtr. Judic.* 73. but not to re-have the Land, and alſo anſwer for the Waſte. 21 *Ed.* 3. 26. 30. For it ſeems he may have a Writ of Waſte, *&c. Vide F. N. B.* 58. H. acc. *Quære.* And *Note*; If by the caſual Profits, he has levied more than his Debt and Damages, the Surplus ſhall be paid to him in Reverſion, if it was levied in his Time, or at leaſt as much as was ſo levied over. 21 *Ed.* 3. 30. And the Tenant ſhall account to the Grantee *ab initio*; for perhaps the Term was incurred before the Purchaſe of the Reverſion. 6 *Ed.* 3. 63. But he ſhall not account according to the true yearly Value, but according to the Extent; for if the Lands are extended too low, the other may have a Re extent at the firſt Day in Court. 22 *Aſſ.* 44. *Extent* 3. But afterwards, he has no Remedy but to pay the Money. See 19 *Ed.* 3. *Extent* 12. *per Green* 32 *Ed.* 3. *Scire facias* 101. And therefore on a *Scire facias ad computandum*, he ought to ſhew what the caſual Profits are, *ibid.* yet ſee 20 *Ed.* 3. *Extint* 18. *contr. per Wilby.* And *Note*; The Writ is ſometimes *ad computandum*, againſt the Opinion in 22 *Aſſ.* 44. and ſometimes *ad computand'*, and to receive the Reſidue of the Money, and to re-have the Land.

(*a*) And in ſuch Caſe Execution ſhall be awarded, if the Conuſor does not ſhew the true Statute. 18 *Ed.* 3. 36. See 17 *Ed.* 3. 49. 21 *Ed.* 3. 46. *contr.*

(*b*) See the Caſe (18 *Ed.* 3. 36.) where it is alſo held, that if a *Venire facias* on an *Audita Querela* be not ſealed, yet the Party may appear and plead. 21 *Ed.* 3. 13. See a *Scire facias* by a Biſhop againſt an Executor; the Sheriff returns [*Clericus & beneficiatus, &c.*] Whereupon a *Fi. Facias* iſſued to the Ordinary; (*Note*; He was not charged as Executor,) and he ſequeſters; the Executor ſues an *Audita Querela*; and reſolved, 1. That though the Executor had a Co-Executor, yet if he alone be greived, he alone may have this Suit. 2. That this Suit lies, notwithſtanding the *Scire facias*, 21 *Ed.* 3. 48. If both Plaintiff and Defendant make Default at the *Scire facias*, yet *Audita Querela* lies on a Releaſe made before; *contr.* if the Defendant makes Default, and the Plaintiff appears. 24 *Ed.* 3. 24. See 8 *H.* 6. 1. *per Martyn.* 12 *H.* 7. *Kelw.* 24. See *Dyer* 203. an *Audita Querela* after Judgment againſt the Plaintiff, for the Executors of a Teſtament, which was afterwards annulled. See 48 *Ed.* 3. 20.

(*a*) And

6 Ed. 7. Eliz. Dyer 232. Rule that the Writ doth not lie after he cometh of full Age.

K (*a*) And if an Infant bind himſelf in a Statute-merchant or Staple, he ſhall have an *Audita Querela* during his Nonage, to avoid that Statute, and afterwards he ſhall have an *Audita Querela* after his full Age, to avoid that Statute upon that Matter in Fact.

L And ſo if a Man make a Statute-merchant or Staple by Dureſs, he ſhall have an *Audita Querela* to avoid that Statute by this Impriſonment.

13 Ed. 3. 2. 18 Ed. 3. 8. 15 Ed 4. 5. Brin. acc. 20 Ed. 3. Aud Quer. 27.

M (*b*) If two be ſeverally bounden in two ſeveral Statutes, and afterwards the Recognizee by Deed doth releaſe both the Statutes to one of them, if he ſue Execution againſt them ſeverally, they ſhall join in *Audita Querela* upon that Releaſe.

20 Ed. 3. Aud. Quer. 28. 25 H. 8. Br. Aud. Quer. 39.

N If the Recognizor infeoff a Stranger of Parcel of the Lands, and afterwards infeoffeth the Recognizee of another Parcel of the Lands, and afterwards the Recognizee ſueth Execution againſt the Recognizor and the Feoffee; the Feoffee ſhall have an *Audita Querela* againſt the Recognizee, and diſcharge his Lands, becauſe that the Recognizee hath diſcharged his Parcel of Land which he purchaſed by his own Act (*c*).

24 Ed. 2. 24. Br. Aud. Quer. 22. 9 H. 5. 1.

O Upon an *Audita Querela* ſued he ſhall have a *Superſedeas* in the ſame Writ to ſtay Execution, *&c.* But if he be (*d*) Nonſuit, he may have a new *Audita Querela*, but then he ſhall not have a *Superſedeas* to ſtay Execution.

P And a Man ſhall not have an *Audita Querela*, ſuppoſing the Recognizee will ſue Execution, but it ought to be alledged in the Writ, that he hath *in facto* ſued Execution.

43 Ed. 3. 28. Thorp. 24 Ed. 3. Aud. Quer. 11.

Q (*e*) If a Man ſue *Audita Querela* upon a Releaſe, and afterwards is Nonſuit, he ſhall not have an *Audita Querela* upon new (*f*) Matter, *ut dicitur* 43 *Ed.* 3. But it ſeemeth the Law is otherwiſe; but he ſhall not delay Execution by a new *Audita Querela*.

44 Ed. 3. 36. 24 Ed. 3. 27. Br. Aud. Quer. 24.

R If a Man doth comprehend two Matters in the *Audita Querela* to extinguiſh the Execution, yet the Writ is good, but the Plaintiff ſhall hold himſelf to one Matter, and the Defendant ſhall anſwer to that. And Variance betwixt the *Audita Querela* and the Record ſhall abate the Writ. But if there is a new *Audita Querela* ſued according to the Record, he ſhall have a *Superſedeas* to ſtay Execution, *&c.* although he had before a *Superſedeas* in the other *Audita Querela*, which was abated.

(*a*) *Note*; It is neceſſary he bring it while under Age; but he ſhall not avoid it by Plea, ſaying he was within Age generally. 17 *Ed.* 3. 76. *Dyer* 132. 13 *Ed* 3. *Audita Querela* 26, 27. 18 *Ed.* 3. 5. 29. 6 *Ed.* 3. 29. See *Kelw.* 10. *per Keb.* *Quære* 26, and 6 *El. C. B.* *Harriſon* and *Worſley*'s Caſe, Judgment reverſed *durante Minoritate.* *Vide infra* C. Dyer 232. *b.* 13 *Ed.* 3. 182.

(*b*) It ſeems the Tenants in Common, *&c.* need not join in an *Audita Querela*, with the Tertenants. *Quære* 20 *Ed.* 3.

(*c*) *Vide infra* E. 11 *H.* 7. 4. 13 *H.* 7. 42. 7 *H.* 4. 31. 34 *Aſſ.* 15. 5 *Ed.* 6. (*H.* 6.) 72.

(*d*) *Note*; If the Conuſee ſues divers Certificates, and on one of them has a Writ returnable in *C. B.* and the Conuſor purchaſes an *Audita Querela*, and has a Writ returnable in *B. R.* and the Party is taken thereon, he ought to ſue a Writ to the Mayor and Clerk, to certify if he has other Statutes, and ſo ſhall be aided. 29 *Aſſ.* 29, *viz. per Audit' Querel'*, *ibid.* 41. See 2 *H.* 7. 12. 33 *Ed.* 3. *Execution* 161. 9 *H.* 7. 16 *H.* 7, *&c*

(*e*) See 17 *Ed.* 3. 27. 43 *Ed.* 3. 28. 24 *Ed.* 3. *Audita Querela* 11. and *ibid.* 29.

(*f*) See 33 *Ed.* 3. *Executors* 61.

S If a Man ſue Execution upon a Statute-merchant, and hath a *Capias* returned in the Common Pleas, if the Feoffees or Parties will ſue an *Audita Querela*, they ought to ſue the ſame out of the Chancery, directed unto the Juſtices of the Common Pleas.

V. 22 H. 6. 56.

T If a Man ſue an Execution upon a Statute-merchant, as Executor unto another, the Party ſhall not have an *Audita Querela*, ſuppoſing in the Writ that he who hath ſuch Execution is not Executor. See 29 *Ed.* 3. 99.

2 R. 3. 8. con. if the Teſtator be living.

V (*a*) And the Proceſs in *Audita Querela* is *Venire facias* and *Diſtringas*, *Alias* and *Pluries diſtringas*, and if he return *Nihil*, or *Non eſt inventus*, he ſhall have a *Capias* againſt the Defendant. *T.* 81 *Ed.* 3. (*b*).

Br. Aud. Quer. 41.

[105.]

A A Man recovereth by Default in an Action of Waſte, the Defendant ſueth an *Audita Querela*, directed unto the Juſtices out of the Chancery, ſurmiſing in the Writ that he was not ſummoned, nor attached, nor diſtrained; for which the Juſtices grant out of the Rolls in the Common Pleas a Writ of Diſceit againſt the *Audita Querela*, which was but a Commandment to the Juſtices to do Right unto the Party, &c. *Trin.* 19 *Ed.* 3. And yet they ſhall proceed upon the Writ of Diſceit, and not upon the *Audita Querela*.

48 Ed. 3. 1. He ſhall not have Capias, but Sicut alias. 12 H. 4. 6 and 15.

B (*c*) If a Man be bounden in a Recognizance in the Common Pleas, and afterwards doth releaſe unto the Party, and then againſt his Releaſe ſueth Execution; then he ſhall there come into the Common Pleas, and ſhall ſue an *Audita Querela* thereupon out of the Rolls. And ſo if one recover in the Common Pleas or King's Bench, Debt or Damages, and afterwards by his Deed releaſeth the ſame, and afterwards ſueth forth Execution upon the Recovery, the Party to whom he releaſed ſhall have *Audita Querela* out of the Common Pleas or King's Bench, where the Record is, and yet he may have an *Audita Querela* out of the Chancery, and ſo it ſhall be ſometimes Judicial, and ſometimes Original.

22 H. 6. 56.

C And if a Man be bounden in a Statute-merchant or Staple unto another Man, and afterwards the Recognizee make a Defeaſance unto the Recognizor; now if the Recognizee ſue Execution upon the Statute againſt the Form of the

46 Ed. 3. 3.
48 Ed. 3. 12.
47 Ed. 3. 5.
47 Ed. 3. 25.
Ant. K.

(*a*) The *Diſtringas* may be in the Lands and Tenements, which he had the Day of the Writ purchaſed. 18 *Ed.* 3. 36. 38 *Ed.* 3. 1. and before the *Diſtringas* ſued, the Conuſee ſhall not be ouſted. 21 *H.* 6. 56. See 48 *Ed.* 3. 1. 31 *Ed.* 3. *Audita Querela* 24. 20 *Ed.* 3. *ibid.* 28. 30.

(*b*) *A.* enfeoffs *B* on Condition to re enfeoff *A.* and *C.* his Wife for their Lives remainder to *D.* the Daughter (Son) of *A.* and the Heirs of his Body, and the ſaid *B.* by Colluſion between him and *E.* makes a Recognizance of 200 *l.* to *E.* and one *F.* (after the Re-enfeoffment as it ſeems,) *A.* dies, and *C.* takes *G.* to Huſband, who on this Matter ſues an *Audita Querela*; and it was Reſolved, 1. That he need not count upon this Writ. 2. That though he may have Remedy by Writ of Diſceit, or Conſpiracy, yet ſeeing here is Matter of Record, which is the Ground of the Writ, it is good. But 3. for that *E.* was Party to the Recognizance, and by the Writ is ſuppoſed Party to the Colluſion, and this Suit is to defeat the Recognizance, and not to recover Damages; the Writ ſhall abate. 26 *Ed.* 3. 73. If Execution be ſued againſt a Feoffee, on a Statute acknowledged before the Mayor of *C.* who had no Authority to take it, *Audita Querela* lies. See 29 *H* 8. *Dyer* 35.

(*c*) And if the Party comes in, in Cuſtody by a *Cepi corpus*, or a *Reddidit ſe*, at the Exigent, he ſhall have a *Scire facias* to acknowledge the Deed, but not if he offer to appear at the Exigent. *Dyer* 285. See a *Scire facias* to acknowledge a Deed, 33 *Ed.* 3. *Execution* 161. and *Audita Querela* 38.

Indentures, the Recognizor (or his Executors, if he be dead) may have an *Audita Querela* againſt the Recognizee.

D And it appeareth in the Regiſter, that a Writ of *Audita Querela* lieth for an Infant who hath entered a Statute-merchant or a Statute-ſtaple during his Nonage, if he be yet within Age.

Ant. N. E And another *Audita Querela* appeareth in the Regiſter for the Feoffee, of Parcel of the Land which belonged to the Recognizor, againſt the Recognizee, becauſe that the Recognizee hath purchaſed other Parcel of the Lands of the Recognizor, *&c.*

Sureties. F If a Man be arreſted and impriſoned upon a Statute-merchant, and afterwards the Recognizee doth releaſe unto the Recognizor, or he pay the Debt, and hath Acquittance, or pay Parcel, and hath a Releaſe for the Reſidue; then they may come into the Chancery, and there find Surety, Body for Body, to be in the Chancery at a certain Day, and there to pay the Money, *&c.* if he cannot diſcharge himſelf by Acquittance or Releaſe; and thereupon he ſhall have a Writ unto the Sheriff where he is in Ward, rehearſing how he hath found Sureties in the Chancery, commanding him to deliver him, if he kept him in Priſon for that Cauſe, and for no other Cauſe, and upon that he may have an *Alias* and a *Pluries*, and Attachment againſt the Sheriff, if he will not deliver him, *&c.*

But if a Man be arreſted and impriſoned upon a Statute-ſtaple, and he hath Acquittance or Releaſe to diſcharge himſelf, then if he will ſue an *Audita Querela* or *Scire facias*, to avoid the Execution of that Statute, he ought for to give Surety as well to the Party, as unto the King in the Chancery, ſeverally in a certain Sum, *&c.* to ſue with Effect, and to render his Body, or pay the Money, *&c.* otherwiſe he ſhall not be delivered out of Priſon: And the ſame is by Force of the Statute of 11 *H.* 6. *cap.* 10.

Writ

Writ of Attaint.

G THE Writ of *Attaint* lieth where falſe Verdict is given (*a*) in a Court of Record againſt the Plaintiff or Defendant, or againſt the Demandant or Tenant in a Plea Real or Perſonal ſued by Writ or by Bill; if the Debt or Damages do exceed forty Shillings; then he againſt whom the Verdict paſſed ſhall have a Writ of Attaint, and the Writ ſhall be ſuch: If it be in Action of Treſpaſs in the King's Bench.

V. 4 Ma. 1. Br. Attaint 127. it lieth not upon an Information. 40 Ed. 3. 11.

H (*b*) *If* S. *of* L. *ſhall make you ſecure*, &c. *then ſummon*, &c. *twenty-four lawful Knights of the Venue of* N. *that they be before us at* B. *on the Octave of Saint* Hilary, *ready by Oath to recognize whether the Jurors by whom a certain Inquiſition was lately taken before us at* B. *by our Writ between* I. *and* M. *his Wife, and the aforeſaid* S. *touching a certain* (*c*) *Treſpaſs to the ſaid* M. *by the aforeſaid* S. *committed, as it was ſaid, have made a falſe Oath, as the ſame* S. *grievouſly complaining to us hath ſhewed, and in the mean time that you diligently inquire who were the Jurors* (*d*) *of the firſt Inquiſition*, &c. *And have them then before our Juſtices aforeſaid*, &c. *or before us*, &c. as the Caſe is and lieth (*e*).

I And by the Statute of *Weſt.* 1. *cap.* 38. a Man ſhall have an Attaint in Plea of Land of Freehold of a Thing which toucheth the Freehold; ſo it lies at Common Law. 3 *H.* 4. 15. *per Hull.*

K And by the Statute of 1 *Ed.* 3. *cap.* 6. a Man ſhall have Attaint in Treſpaſs. See for *Attaint in Treſpaſs* or *Debt*, Parl. 21 Ed. 3. n. 23.

L And by the Statute of 5 *Ed.* 3. *cap.* 6. in the End of the Statute a (*f*) Man ſhall have Attaint of Treſpaſs ſued by Bill without Writ before Juſtices of Record, if the Damages exceed forty Shillings.

14 H. 7. 14. Brian.

(*a*) See on the Statute 23 *H.* 8. *cap.*—— that Attaint lies againſt the Executors or Heirs, &c. *Quære Dyer* 201.

(*b*) But if they are at Iſſue on the Point of an Attaint, it ſhall be tried by twelve (Jurymen.) 21 *Ed.* 3. 102. *Contra* where the Defendant pleads a Releaſe of the Plaintiff, it ſhall be tried by twenty-four, who are alſo afterwards to inquire of the falſe Oath, if they find for the Plaintiff. 20 *H.* 7. *Kelw.* 55. *Note*; The Viſne ought to be of the ſame Place where the Iſſue in the firſt Writ aroſe. 12 *R.* 2. *Brief* 641. *Poſt.* 242. *b.*

(*c*) Although the original Writ or Suit compriſed many Points, yet the Writ of Attaint ſhall mention only the Point on which the falſe Oath was given. *Dyer* 141.

(*d*) So that properly the Jurors are not Parties, and therefore where the Defendant admits the Writ to be good, or is eſtopped to ſay it is not good, the Petit twelve ſhall not plead in Abatement, though the Writ was purchaſed pending another, Jointenancy or Coverture in the Plaintiff, 21 *Ed.* 3. 16. or Outlawry in the Plaintiff. 2 *H.* 7. 7. But a Plea which proves the Writ abated *in facto* they may have, as Death of the Plaintiff or Defendant. 18 *H.* 8. 5. Alſo a Thing which excuſes the falſe Oath they may plead as a Releaſe of Actions perſonal. 21 *Ed.* 3. 16. *per Thorp*, or a Releaſe or Award between the Plaintiff and Defendant. 13 *Ed.* 3. 1. 5. 35 *H.* 6. 30. 18 *H.* 8. 1. So a Releaſe or Award between the Plaintiff and themſelves. 13 *Ed.* 4. 1. *per Sulliard.* 12 *H.* 6. 6. the Petty Jury cannot plead *Non-tenure*, becauſe it concerns the Land; *contra* of Coverture.

(*e*) And the Party may have Attaint by another Writ. See *Ed.* 2. *Brief* 827.

(*f*) But if the Damages do not exceed 40 *s.* he ſhall not have Attaint on the Statute, although *A.* ſued by Bill of Treſpaſs againſt *B.* who pleads Villainage againſt *A.* and found *A.* to be free. Stat. 28 *Ed.* 3. *cap.* 8. *Quære*, if he ſhall have a Writ of *Nief* againſt ſuch Verdict.

14 H. 7. 14. Fineux. And alſo a Man ſhall have Attaint for the Damages, although they be not paid, *&c.* Stat. 2 *Ed.* 3. *cap.* 7. M

34 H. 6. 13. And if falſe Verdict paſs by Writ of *Niſi prius*, then the Form of the Writ is ſuch : N

Ready by Oath to recognize whether the Jurors, by whom a certain Inquiſition lately was ſummoned before us, and taken before our beloved and faithful T. *of* B. *one of our Juſtices aſſigned to hold Pleas before us, by our Writ of* Niſi prius *at* K. *between him the ſaid* E. *and the aforeſaid* T. *touching a certain Treſpaſs*, &c.

44 Ed. 3. 21. 44 Aſſ. Br. Attaint 131. See 14 Ed. 3. 41. the Form. And if the Verdict be taken within any Liberty or Corporate Town, then the Writ of Attaint is ſuch : O

[106.] *Ready by Oath to recognize whether the Jurors, by whom a certain Inquiſition was lately ſummoned and taken at* L. *without our Writ, before the Mayor and Bailiffs of our City of* Lincoln, *of a Plea which was before our beloved and faithful* S. Scrope *and his Companions, our Juſtices aſſigned to hold Pleas before us, between* I. *of* L. *and the aforeſaid* S. *of a certain Treſpaſs to him the ſaid* I. *by the aforeſaid* S. *committed, as it is ſaid, (which ſaid Plea, according to the Liberties granted by the Charters of our Progenitors, formerly Kings of* England, *and our Confirmation thereof to the City and Citizens of our City aforeſaid, was returned to be pleaded before our ſame Mayor and Bailiffs) have made a falſe Oath, as he the ſaid* I. *grievouſly complaining to us hath ſhewed, or not ; and in the mean time*, &c. (*a*).

And upon falſe Verdict given in *London* upon *Niſi prius*, the Form of the Writ is ſuch (*b*) : A

Ready by Oath to recognize whether the Jurors, by whom a certain Inquiſition was lately ſummoned before us, and taken before R. *of* M. *then one of our Juſtices aſſigned to hold Pleas before us, having aſſociated to him* A. *of* F. *at Saint* Martin's, London, *according to the Liberties of the City aforeſaid, by our Writ*, &c.

If a falſe Verdict be given in a Corporate Town, upon a Plaint without Writ, then it is ſuch : B

Ready by Oath to recognize whether the Jurors, by whom a certain Inquiſition was lately taken before us at Lincoln, *without our Writ, between* A. *of* D. *of a certain Treſpaſs*, &c. *committed, of which ſaid Treſpaſs the ſaid* B. *was convicted, and twenty Pounds ſtand adjudged to the ſaid* A. *for his Damages in this Behalf, as it is ſaid, have made a falſe Oath, as the ſaid* B. *&c.*

(*a*) *Who ſhall have an Attaint.*

The Teſtator entered into Religion, and was deraigned ; *Quære*, if Attaint lies againſt the Heir or Executor, or if the Executor brings Attaint, if the Teſtator ſhall be reſtored ; as if the Son is barred in a *Mortdanceſtor*, the Daughter ſhall have an Attaint, and there the Judgment was againſt her Brother of the half Blood only. *Kelwey* 119. So a ſpecial Heir ſhall have Attaint. 22 *H.* 6. 28.

(*b*) See 7 *H.* 6. 32. on a falſe Oath given in *London*, the Sheriff returned, that by the Cuſtom of *London*, no Attaint ſhall be brought of a Verdict given by the Commons there, and therefore he could not execute the Writ, *Salvis Libertatibus Civitatis prædict'*, and out of the Chancery iſſued a Writ *de Libertatibus allocandis*, upon which iſſued a *Venire facias* to the Mayor and Sheriffs, to come and maintain their Liberties, and an *idem dies* given to the Parties, and they came, and their Liberties were allowed, and the Plaintiff took nothing by his Writ, but was awarded to Priſon. 13 *Ed.* 4. 3. See the Stat. 11 *H.* 7. 21. Stat. 37 *H.* 8. *cap.* 5. *Dyer* 81.

C And if falſe Verdict be given within the Verge, then the Writ ſhall be ſuch: *Ready by Oath to recognize whether the Jurors by whom a certain Inquiſition lately was taken before the Steward and Marſhal of our Houſhold at* C. *without our Writ, between* K. *and the aforeſaid* T. *of a certain Treſpaſs to the ſame* K. *by the aforeſaid* T. *at* C. *within our Verge (as it was ſaid) was committed, have made a falſe Oath*, &c.

D (*a*) And if a Man be condemned by falſe Verdict in Debt or Damages, then if he ſue an Attaint, he ſhall have a ſpecial Writ unto the Juſtices, to bail him upon Sureties taken, that if the Attaint paſs againſt him, he render himſelf to Priſon, or ſatisfy the Debt; and the Writ is ſuch (*b*):

The King to his beloved, &c. E. *of* S. *and his Companions, greeting: Whereas* J. *hath arraigned before us, by our Writ, a certain Jury of twenty-four to convict the Jurors by whom a certain Inquiſition was lately taken before us at* W. *by our Writ, between* R. *and the aforeſaid* J. *of a certain Treſpaſs*, &c. *committed, as it is ſaid; and we have received Information on the Behalf of him the ſaid* J. *that he, by Pretence of Proceſs made in the aforeſaid Plea of Treſpaſs, is taken and detained in the Priſon of our* Marſhalſea *before us, whereby he is leſs able to proſecute his Jury aforeſaid, whereupon he hath beſought us to adminiſter to him a fit Remedy; We being unwilling that the ſaid* J. *be ſo detained in our Priſon, whereby he is not able to proſecute his Jury aforeſaid as he ought, do command you, that if the ſaid* J. *ſhall find before you ſufficient Manucaptors, who may mainprize to have him before us to proſecute the Attaint aforeſaid, and that Attaint being determined, if it ſhall paſs againſt him, or he ſhall not proſecute that Attaint, that he render himſelf to our Priſon aforeſaid, and as well ſatisfy us of that which to us, as the aforeſaid* R. *of that which to him belongeth in the Premiſſes, and that he further do and receive what the Court ſhall conſider in this Behalf, then that you cauſe him the ſaid* J. *to be delivered out of our Priſon aforeſaid by ſuch Mainprize, to proſecute the abovesaid Attaint*, &c.

Ant. 99. Poſt. 108.

E (*c*) And if a Man vouch in a *Præcipe quod reddat*, one who entereth into the Warranty and pleadeth, and loſeth by falſe Verdict, he ſhall have an Attaint, and the Writ ſhall make mention of the Voucher: And ſo if a Man pray to be received for Default of Tenant for Life, and is received and pleadeth, and loſeth by falſe Verdict, he ſhall have a Writ of Attaint, and the Writ ſhall mention the Receipt.

8 H. 4. 4. 11 H. 4. 51. Skeen. 34 H. 6. 31. 11 H. 4. 50. Gaſcoigne. 17 Ed. 2. Recovery in Value 32.

F (*d*) And ſo if it paſs againſt the Plaintiff by falſe Verdict, and he bring an Attaint, the Writ ſhall make mention of the Voucher, and of the Receipt;

9 H. 6. 38. Yet he ſhall not mention if the Tenant for Life be dead.

(*a*) And ſo it is in *C. B.* but ſome held that a Writ ſhould be ſent to the Warden of the *Fleet*, to have the Priſoner in Court *quolibet Die pendente placito.* Dyer 193. See and Note for the Form of this Writ, and that *C. B.* may ſend to the Marſhal of *B. R.* for ſuch a Priſoner, and in what Form it ſhall be, *Dyer* 364.

(*b*) If the Plaintiff loſes againſt the Garniſhee in Detinue, and thereon brings Maintenance againſt a Stranger, the Writ ſhall make Mention of the Garniſhment. 21 *H.* 6. *Bro.* 90. See Attaint brought againſt the Vouchee by the Tenant; Exception, for that he did not mention the Voucher; *ſed non allocatur.* 22 *Ed.* 3. 11. See 9 *H.* 6. 39.

(*c*) See 9 *H.* 6. 38. 11 *H.* 4. 5. 4 *Aſſ.* 71. 4 *Ed.* 3.

(*d*) If a Parſon prays in Aid of the Patron and Ordinary, and loſes by Action tried, the Parſon only ſhall have Attaint, and not the Patron. 19 *H.* 6. 75. 22 *H.* 6. 28. See 9 *H.* 6. 39. 38.

4 Aſſ 7. 4 Ed. 3. 54. Br. Attaint 49. and ſo if he in the Reverſion join with the Tenant for Life by Aid Prayer, and they loſe, by which he in the Reverſion brings an Action, he ſhall make mention in the Writ of the Aid Prayer; and alſo in Aſſiſe, if it be diſcontinued, and afterwards Re-attachment ſued, and he loſeth by falſe Verdict, the Writ of Attaint ſhall make mention of the Re-attachment, becauſe he reviveth the Original of Aſſiſe.

G 9 H. 6. 38, 39. But if the Defendant in a Writ of Detinue pray Garniſhment, who cometh and pleads, and the Plaintiff loſeth, by which he bringeth Attaint againſt the Garniſhee, the Writ of Attaint ſhall make mention of the Garniſhment. That is well debated *M.* 9 *H.* 6. in the Title *Attaint* in the Abridgment.

But, ſaving the Opinion of the Book, it ſeemeth the Writ of Attaint ſhall make mention of the Garniſhment, *&c.* for the Defendant in a Writ of Detinue who ſueth the Garniſhment, is in manner out of Court; and when the Garniſhee comes, the Plaintiff counteth upon his original Writ, which is the Writ of Detinue, and the Garniſhee ſhall anſwer to that Count; and the Writ of Garniſhment is but for to make him come in and anſwer to the Plaintiff to his Original and Count, and when he comes and pleads, he pleads unto the Plaintiff's Count, which is upon the Original, by which the Plea which is between the Plaintiff and the Garniſhee is upon the original Plea, as it ſeemeth; *tamen quære.*

H 11 Aſſ. 19. Br. Attaint 57. 23 Aſſ. 11. [107.] Challenge 132. Thorp. 11 Ed. 3. Attaint 16. ac. 10 Ed. 4. 17. ac. Co. 291, 292. (*a*) And if a Man plead a Deed in Bar, in which there are Witneſſes, and the Deed is denied, for which Proceſs is awarded againſt the Witneſſes which join with the Jury, and it is found the Plaintiff's Deed; now he ſhall not have an Attaint, *&c.* becauſe the Witneſſes do affirm the Verdict by their Teſtimonies. But if it be found not his Deed, then the other Party ſhall have an Attaint, for the Witneſſes cannot prove a Negative, but of the Affirmative they may have Notice whether it be his Deed or not. A Man ſhall have an Attaint in ſpecial Caſes, where every Word of the Verdict is true; as if a Man hath had Common appendant unto his Land, Time out of Mind, and he bring an Aſſiſe of the Common, and make Title that he hath had Common Time out of Mind, *&c.* without ſpeaking of the Appendancy, and it is found for him; the Defendant ſhall have an Attaint, for the Plaintiff's Title is for Common in Groſs, and not Common Appendant; and yet the Words of the Verdict are true, that he hath had Common Time out of Mind, *&c.* but not in ſuch Manner as ſhall be taken by the Title.

A 10 Ed. 4. 17. 24 H. 8. Br. Attaint 96. And ſo if a Man have a Rent as Foreſter in Fee of ſuch a Foreſt Time out of Mind, and in Aſſiſe of that Rent he make Title thereunto, that he hath had a Rent out of that Land Time out of Mind, *&c.* without ſaying as Foreſter in Fee, *&c.* and it be found for him, the other Party ſhall have an Attaint upon that Verdict, although the Words of the Verdict be true, for he hath not had ſuch Rent by Preſcription as ſhall be intended and taken by his Title.

(*a*) See 22 *Aſſ.* 15. 11 *Ed.* 3.—11 *Aſſ.* 19. 40 *Aſſ.* 23, 25. 23 *Aſſ.* 11. 3 *Ed.* 3. *Attaint* 50.

B (*a*) If a Man recover outrageous Damages by Verdict, but he releaſeth Parcel of the Damages before Judgment, and hath Judgment for the Reſidue, the Defendant ſhall not have an Attaint for thoſe Damages which are releaſed (*b*).

35 H. 6. 30. 11 Ed. 4. 5. 13 Ed. 4. 2. 14 H. 7. 5. 9 H. 6. 2.

C (*c*) And in a Writ of Waſte the Plaintiff ſhall have a Writ to inquire of the Waſte, who if they give falſe Verdict by which the Plaintiff recovereth, the Defendant ſhall have an Attaint, *per Cur' M.* 2 *H.* 4. But I do not ſee how the ſame can be warranted by any Statute, which giveth the Attaint, becauſe the Writ of Inquiry is awarded by the Court *ex Officio per Sacramentum proborum*, *&c.* And the Sheriff may make the Inquiry by the Oaths of ſix or eight Perſons of the Waſte, and he is not bound to take twelve Perſons. *Quære* of this.

3 H. 6. 29. 3 Martin ac. 48 Ed. 3. 19. cont. 33 H. 6. 25. 2 H 4. 2. per Curiam, ſo of Error. 18 H. 8. 1. 21 H. 6. 56. 28 H. 8. 5, 10. 38 Ed. 3. 12. and 27. Br. Colluſion 18. upon Writ of Inquiry of Waſte for an Abbot, Quale jus ſhall iſſue, which proves it is no Verdict, but an Inquiry.

D (*d*) The King ſhall have an Attaint upon a falſe Verdict paſſed againſt him as well as a common Perſon.

42 Ed. 3. 26.

E (*e*) In Treſpaſs againſt two, one cometh and pleadeth Not guilty, and is found Guilty, and afterwards the other cometh and pleadeth Not guilty, and is found Guilty by another Inqueſt; now in this Caſe the firſt Jury ſhall aſſeſs all the Damages for the Treſpaſs, and the Defendant in the laſt Inqueſt ſhall have an Attaint of the Damages aſſeſſed by the firſt Inqueſt, if they be outrageous or exceſſive, *&c.*

34 H. 6. 32. ac. 12 H. 4. 5. In Waſte againſt two, one made Default, and the other pleaded; he who made Default ſhall not have Attaint. 43 Ed. 3. 36. 34 H. 6. 12. Morle cont. 39 H. 6. 1. ac. 8 H. 4. 23. Tirwin.

F (*f*) Tenant by Statute-merchant ſhall have an Attaint, if he be barred in Aſſiſe by falſe Verdict, or found againſt him by falſe Verdict, where he is Defendant in the Aſſiſe.

21 Aſſ. 16. Br. Attaint 64. 36 H. 6. 13. ac. in perſonal Actions.

G (*g*) If a Man recover in a *Præcipe quod reddat*, againſt a Tenant by falſe Verdict, there have been divers Opinions whether the Tenant ſhall have an

21 H. 6. 54.

(*a*) And therefore, though he cannot abridge the Damages given on ſuch a Verdict. 9 *H.* 6. 2. yet he may have an Attaint for too ſmall Damages. *Ibid.*

(*b*) And ſee accordant to this Caſe, a Releaſe of Damages ſhall ouſt the Attaint, 14 *H.* 7. 5. 12 *Ed.* 4. 5. 13 *Ed.* 4. 2. 5.

(*c*) So agreed by *Martyn contr. Babbington*, for by him it is more than an inqueſt of Office, for that the Judges are bound to render Judgment according to the finding of the Inqueſt, as in this Caſe of Waſte; but on an Inqueſt to inquire of Damages, there it is only for Information, and the Court may increaſe or diminiſh the Damages. 3 *H.* 6. 29. See 2 *H.* 4. 31. 48 *Ed.* 3. 19. *contr.* 7 *H.* 4. 38.

(*d*) See 42 *Ed.* 3. 26. 4 *Mar. Bro. Information* 127. 11 *Co.* 5. 6.

(*e*) It ſeems, that in this Caſe, as to the Damages, they ſhall join in an Attaint, adjudged 25 *H.* 6. 23. but as touching Parcel, if they be found by one Verdict Guilty, they may join, as 18 *Ed.* 3. 25. 30 *Ed.* 3. 1. or they may ſever. 35 *H.* 6. 21. *per Aſht.* 46 *Ed.* 3. 81. *per Finchd.* See 1 *H.* 5. 13. 44 *Ed.* 3. 7. 44 *H.* 6. 32.

(*f*) *A.* ſued an Execution againſt *B.* on a Statute-Merchant, *B.* brings an *Audita Querela*, which on an Iſſue is found for *B.* *A.* brought an Attaint, and adjudged that it lies, and if the falſe Oath be found, Execution ſhall be awarded for him. 21 *Ed.* 3. 59. See 21 *Aſſ.* 16. 21 *Ed.* 3. 47. and 43 *Aſſ.* 41. how if he ſhall be acquitted on the Iſſue.

(*g*) See 41 *Ed.* 3. *Attaint* 27. 21 *H.* 6. 55. 113. 34 *H.* 6. 11. 12 *H.* 6. 6. *Ant.* 105. *Attaint* 70.

Attaint before Execution ſued out againſt him. *Vide* 41 *Ed.* 3. *Lib. Aſſ.* 21.
H. 6. 60. But the Statute of 1 *Ed.* 3. ſaith, That a Man ſhall have an Attaint
of Damages before Execution ſued of them, before which Statute it
ſeemeth he could not have Attaint of them. But in the Time of *Ed.* 1. the
Defendant ſued forth an Attaint for Damages upon falſe Verdict given againſt
him in a Writ of Treſpaſs before the Plaintiff ſued Execution of the Damages,
34 H. 6. 13. which ſee in Title *Attaint* in the Abridgments, *Temp. Ed.* 1. And alſo
by the ſame Reaſon, if a Man do recover Land, the Tenant ſhall not have
26 H. 8. 2. Attaint before Execution. (*a*) And *Non-tenure* hath been pleaded, and ad-
31 H. 6. 12. mitted a good Plea divers Times in an Attaint. And on the other Side, if
35 H. 6. 39. the Tenant ſhall not have an Attaint before Execution ſued, or Entry made
22 Ed. 3. 10. Br. Attaint 42. by the Demandant or his Heir, then perhaps they will not enter until the
Jurors are dead, and then the Tenant ſhall be without Remedy by Attaint.

5 Aſſ. 24. (*b*) If a Man who was Tenant do recover in Attaint, the Judgment ſhall H
Ed. 3. 34. be, that he ſhall be arreſted, *&c.* which could not be, if the Demandant hath
Br. Attaint 48. 6 Aſſ. ib. not entered, and when he himſelf is Tenant in Poſſeſſion.

Br. 52. And I think it the better Opinion, that if in Treſpaſs the Defendant plead I
Villainage in the Plaintiff, *&c.* and he is found frank, unto his Damages of
twenty Shillings, the Defendant ſhall not have an Attaint for the Smallneſs
of the Damages, *&c.* But in a (*c*) *Præcipe quod reddat*, if the Tenant plead
Non-tenure, and it be found againſt him, he ſhall have an Attaint, *&c.*

(*d*) An Attaint ſhall be maintainable againſt the Terre-tenant without na- K
14 Aſſ. 2. Br. Attaint 59. ming him who was Party to the Record: Otherwiſe it is in a Writ of *Recor-*
10 Ed. 4. 13. *dare*; for that ſhall be ſued againſt him who was Party, or his Heir or Exe-
8 H. 4. 18. cutor, if it be a Perſonal Action, otherwiſe it ſhall abate.
9 H. 6. 47.
34 H. 6. 36. 35 H. 6. 30. contr. is admitted.

(*a*) See 31 *H.* 6. 12. 14 *Aſſ.* 2. 26 *H.* 8. 2. 8 *Ed.* 4. 19. 6 *Ed.* 3. *Waſte* 25. *contr. Vide ant.* 97.

(*b*) And alſo to the ſame Iſſues. 30 *Ed.* 3. *Judgment* 140. 40 *Aſſ.* 20.

(*c*) He who pleads Non-tenure, ſhall have an Attaint. 40 *Aſſ.* 20. 23. *per Fitzh.* and therefore, where the Party himſelf pleaded Non-tenure of Parcel, the Plaintiff was driven to maintain his Writ. 21 *Ed.* 10. See in an Attaint brought againſt him who recovered Non-tenure, held no Plea, 8 *Ed.* 4. 19. *viz.* if he has once Execution, *per Priſot.* 35 *H.* 6. 44. See 10 *Aſſ.* 8. 31 *H.* 6. 12. 26 *H.* 8. 2.

(*d*) Yet ſee in an Attaint by him who was Plaintiff againſt him, who was Tenant in the Original, Non-tenure held a good Plea, except the Plaintiff had freſhly ſued, 6 *Ed.* 3. 32. 21 *H.* 6. 55. *per Aſcue, &c.* but it is there agreed, that *Non tenure* is a good Plea againſt him who recovers. But it is certain, that Attaint may be brought againſt the Tertenant alone, and if it paſs againſt him, yet he ſhall not be taken; *contra* of him who was Party. 8 *H.* 4. 21, 22. See Jointenancy in Attaint againſt him who recovered Part; *contra* in Attaint againſt the Tenant, where the Party was barred. 26 *Aſſ.* 12. But if after the Writ of Attaint purchaſed, the Record be removed by Writ of Error, they ſhall yet proceed in *C. B. Dyer* 281, 284. See 6 *Aſſ.* 10. 40 *Aſſ.* 20. 4 *Ed.* 2. *Attaint* 67. *contra.*

☞ The Record of an Aſſiſe of freſh Force was ſent by Writ out of Chancery to *C. B.* and Attaint was brought on the Record there. 21 *Ed.* 3. 10. See *Dyer* 81. and there it ſeems, that if Iſſue be joined in *C. B.* on a Matter triable in the County *Palatine*, and it is there tried, and the Record removed, that Attaint lies here. 19 *H.* 6. 53. See *Dyer* 250. that Attaint lies in *C. B.* on a Record in *B. R.* ſent by *Mittimus* into *C. B.* and ſo on a Verdict *in Scaccario.*

L Attaint doth not lie upon falſe Verdict given in an Appeal of Maihem, or Appeal of Felony or Murder.

34 H. 6. 36. 35 H. 6: 30. the cont. is admitted.

M An Attaint may be ſued in the Common Pleas, if the Record be there; or it may be ſued in the King's Bench upon a falſe Verdict given in the Common Pleas, if the Record be removed into the King's Bench.

8 Eliz. Dyer 250.

N A Recovery was in an Aſſiſe brought in the King's Bench, and afterwards that Record was ſent unto the Common Pleas, and the Party ſued an Attaint upon the Record in the Common Pleas. *Vide* 8 *Ed.* 2. *H. Aſſiſe*, *Iter. Kan.*

16 Aſſ. 4. Br. Attaint 60. 44 Ed. 3. 2. 44 Aſſ. 20.

Attaint was ſued upon a falſe Verdict given againſt the Defendant when he claimed Liberty, and adjudged that he ſhould have it. *H.* 15 *H.* 3.

21 Ed. 3. 10. Br. Att. 32. 21 Ed. 3. 3. Ibid. 51. H. 15 H. 3.

O (*a*) And the Writ of Attaint may be ſued out of the Common Pleas or King's Bench, upon a falſe Verdict given in the ſame Court, as well as out of the Chancery. *Quod vide* 30 *Ed.* 1. *Itin. Cornub.*

21 Eliz. Dyer 364.

P In a Writ of Entry brought in *Suſſex*, the Defendant pleaded a Releaſe in *London*, which was found againſt him in *London*, for which he brought an Attaint in *London*, and it was maintainable; *quod vide M.* 18 *Ed.* 1. *F. Brev.* 827.

Q (*b*) If the King recover by falſe Verdict, he ſhall have Attaint againſt the Petit Jury only, as if the King do recover by erroneous Proceſs, *&c.* the Party ſhall have a Writ of Error of the Judgment, and ſhall not name the King, becauſe he is always preſent in the Court.

20 H. 7. 6. [108.] Ant. 106. E.

A The Vouchee or Tenant by Reſceit, or he in the Reverſion, where he joineth to the Tenant by *Aid Prier*, ſhall have Attaint if he loſe by falſe Verdict (*c*): And if Tenant for Life loſe by falſe Judgment, he in the Reverſion ſhall have an Attaint or Writ of Error, living the Tenant for Life, by the Statute of 9 *R.* 2. *cap.* 3.

2 H. 4. 4. 16 Ed. 3. Error 72. 20 Ed. 3. Error 2. 21 H. 6. 29.

B (*d*) If the Defendant in Treſpaſs plead Villainage in the Plaintiff, and he ſaith that he is frank, and is ſo found by Verdict, and afterwards the Defendant dieth, his Heir ſhall have an Attaint to avoid this Eſtoppel and falſe Verdict, although it was given in a Perſonal Action.

C In an Attaint upon a Recovery in *Præcipe quod reddat*, the Defendant pleads *Non-tenure*, and the Demandant ſaith, that he made a Feoffment unto unknown Perſons, *&c.* and that he brought the Action within the Year, and with that, that he will aver that the Defendants took the Profits the Day of

8 H. 4. 13. Skyene.

(*a*) See 21 *Ed.* 3. 3. If an Aſſiſe be taken before Juſtices aſſigned, and adjourned for Difficulty into Bank, if an Attaint be ſued, it is neceſſary to ſue a Writ to the Juſtices, to remand the Record before the Juſtices aſſigned in *Pais*, and when they have the Record, there may iſſue an Attaint on the Rolls there.

(*b*) *Note*; In Suits *pro Domino Rege & ſeipſo*, Attaint and Error granted in Parl. *Rot. Parl.* 21 *Ed.* 3. *No* 24. *Quære.*

(*c*) But the Writ ought to mention the Voucher and alſo expreſly, that he entred into Warranty, and not only by a Suppoſal. 22 *Ed.* 3. 4. See Attaint by him in the Reverſion, and by Reſceit without Mention made of the Death or Life of the Leſſee, and yet the Judgment is divers (different) 4 *Ed.* 3. 54. See *Dyer* 241. *b.* 44 *Ed* 3. *Attaint* 22. *Ant.* 99 *E.*

(*d*) See accordant 13 *Ed* 4. 2. See 8 *H.* 4. 16. the Heir ſhall have an Attaint on ſuch a Trial in a *Homine Replegiando*, but not in Treſpaſs. 10 *H* 6. 18 See 33 *H.* 6. 19 45 *Ed.* 3. 1 14 *H.* 7 5. 13 *Ed.* 4. 2. 33 *H.* 6. 19.

the

21 H. 6. 55. 21 Ed. 3. 10. Br. Attaint 32. It ſhall be tried by twelve, and not by the Attaint.

the Writ purchaſed; and the Defendant ſaith, that he did not take the Profits, *&c.* (*a*) Now this Iſſue ſhall be tried by the Attaint; and if they give falſe Oaths, he ſhall have an Attaint upon that Verdict; by *Newton:* As if in a Writ of Right the Tenant plead a collateral Warranty made within the ſame County, it ſhall be tried by the Grand Aſſiſe; and if they give falſe Verdict, he ſhall have an Attaint, becauſe the ſame is out of the Point of Aſſiſe; by *Newton*, *Tr.* 21 *H.* 6.

19 Aſſ. 13. Br. Attaint 63. 32 Aſſ. 13. Br. Attaint 75.

D (*b*) Nonſuit in Attaint after Appearance is peremptory, and he ſhall not have a new Attaint; and ſo upon a *Retraxit*, if the Demandant ſay, he will no more ſue his Attaint, and that he entered upon Record, he ſhall not after have another Attaint.

14 Aſſ. 2. Br. Attaint 59.

E (*c*) If a Man have a *Præcipe quod reddat* againſt divers, by ſeveral *Præcipes*, and by Inqueſt it is found for the Demandant; he ſhall have a Writ of Attaint againſt the Tenant, *&c.* But if it is found againſt the Tenants, he ſhall have ſeveral Attaints; for as unto all of them, it is a ſeveral Inqueſt to try their Iſſues ſeverally.

F If the Demandant be barred in a *Formedon*, and afterwards releaſeth all Actions, or all his Right in the Land, yet his Heir ſhall have a Writ of Attaint.

G And ſo if the Father be Nonſuit upon an Attaint upon a Writ of *Formedon*, he there ſhall have an Attaint.

H And a Man ſhall have an Attaint before Juſtices of *Oyer* without original Writ, upon a Bill only ſued before the ſame Juſtices. *T.* 5 *Ed.* 2. *Attaint* 68.

(*a*) For the Iſſue ariſes on the Point of Attaint, and therefore ſhall be tried but by twelve. 21 *Ed.* 3. 10. but if in Attaint in Aſſiſe, the grand Inqueſt inquire of Damages, no Attaint lies thereof. 8 *H.* 4. 22. See 12 *H.* 6. 6, 66. an Iſſue collateral, real, as Jointenancy, *&c.* ſhall be tried by the twenty-four; and by *Babb.* Attaint there lies, if they take a falſe Oath, by Aſſiſe. See 27 *Aſſ.* 61. if in Attaint the Tenant pleads *Non tenure, &c.* he ſhall plead over that he made a true Oath, *&c.* See 22 *H.* 6. 55. F. *Attaint* 65.

(*b*) And the Plaintiff ſhall be amerced, and taken. 6 *Aſſ.* 5. See *Co. Lit.* 139. *a.* 19 *Aſſ.* 13. 34 *Aſſ.* 6. and 9 *infra* E.

(*c*) See the like Caſe 35 *H.* 6. 22, *&c. per Priſot*, and 18 *Ed.* 3. 25. If in an Aſſiſe againſt two, on *Nul Tort* pleaded, the one is acquitted of the Diſſeiſin, but he is Tenant, and the other is found Diſſeiſor, they ſhall have ſeveral Attaints; and ſo if one is found Diſſeiſor of Part, and the other of the Reſidue, *per Cur.* 30 *Ed.* 3. 1. In Reſcue againſt two, they plead Not guilty, and found againſt them, they ſhall join in Attaint; but in an Aſſiſe againſt ſeveral Tenants on a falſe Oath as to Parcel, they ſhall ſever in Attaint; *contr.* if it be only for Damages, *per Tuſhd. Quære*; and ſee they may join in Error. 3 *H.* 4. 16. he who is acquitted of a Diſſeiſin may join in Error with him who is found Diſſeiſor, but not in Attaint. 2 *Ed.* 3. 3.

A Writ of forcible Entry and Deteiner againſt *A. B.* and *C.* and all found Guilty of the forcible Entry, but *C.* only of the forcible Deteiner; they ſhall join, *&c.* *Dyer* 141. See 29 *Aſſ.* 9. a Joinder in Attaint by him who diſclaims, him who took on him the Tenancy of Parcel, and him who took the Reſidue jointly with a Stranger, and the Writ found true. See 19 *R.* 2. *Brief* 926. Tenant by Statute or Leſſee for Years, or a Guardian in an Aſſiſe againſt him, and he who has the Freehold, and one is acquitted of the Diſſeiſin, but the other found Guilty, they ſhall join in Attaint as it ſeems, for he hath loſt his Term, and he has no other Remedy, becauſe he was Party to the Judgment. 43 *Aſſ.* 41. See 14 *Aſſ.* 20. 35 *H.* 6. 22.

If

I If falſe Verdict be given in Aſſiſe of *Novel Diſſ.* then if the Plaintiff will ſue an Attaint, he ought to have ſuch a Writ.

The King to the Sheriff of Lincolnſhire, *greeting: If* A. *ſhall make you ſecure, then ſummon,* &c. *twenty-four Knights of the Venue of* S. *that they before our Juſtices at the firſt Aſſiſe when they ſhall come into thoſe Parts*; or thus, *before our beloved and faithful* R. *of* W. *and* B. *of* F. *and thoſe whom we have aſſociated to him (touching certain Matters,* &c. *which the ſame* R. *and* B. *may make known to you)* (*a*) *ready by Oath to recognize whether* J. *unjuſtly and without Judgment diſſeiſed the aforeſaid* A. *of his Freehold in* S. or *of his Common of Paſture in* S. *which belongs to his Freehold in the ſame Town, after the firſt Paſſage over of Lord* H. *Son of King* J. *into* Gaſcony, *whereof the ſaid* A. *complains that the Jurors of the Aſſiſe of Novel Diſſeiſin which between them was ſummoned and taken before us at* W. *by our Writ,* or *before the aforeſaid* R. *and* B. or *before our beloved and faithful* W. *of* H. *and his Companions, our Juſtices laſt in Eyre at* L. *in your County by our Writ, have made a falſe Oath*; *and in the mean Time that you diligently inquire who were the Jurors of that Aſſiſe, and have them then before the Juſtices aforeſaid at the Aſſiſe aforeſaid,* or *before* R. *and* B. *and ſummon,* &c. *the aforeſaid* I. Or thus, *The aforeſaid* I. H. *who now holds the Tenements aforeſaid, that he be then there to hear that Recognition: And* (*b*) *have there the Names of the Knights and this Writ.*

K And if a Man loſe by falſe Verdict in Aſſiſe before Juſtices of Aſſiſe, if he will ſue an Attaint before the ſame Juſtices, he ought to ſue a Patent directed unto the ſame Juſtices to give them Authority to hold Plea thereof; or he may ſue a Patent unto other Juſtices to hold Plea of that Writ of Attaint; and the Form of the Patent is ſuch:

(*a*) Yet ſee it adjudged, that on ſuch Writ the Party may aſſign a falſe Oath on any ſpecial Plea in the ſame Aſſiſe. 11 *H.* 4. 5, 265. *Note*; If on a ſpecial Iſſue they find for the Plaintiff, and inquire over of the Seiſin and Diſſeiſin, and that is alſo found, he may aſſign a falſe Oath in the Diſſeiſin found, but in no other Point; *per Thirn. Hill.* and *Hankſ.* For he ought to have a ſpecial Writ for that, or elſe a general Writ *quod Jurat' in Aſſiſa capt' falſum fecer' Sacramentum*; Or they may aſſign the falſe Oath, in what Point they will. 11 *H.* 4. 27. And note there in Aſſiſe againſt two, the one pleads to the Writ, and the other to the Aſſiſe; if he who pleads to the Aſſiſe brings Attaint, he cannot aſſign a falſe Oath in any Point put in Iſſue by his Companion. But they may have an Attaint in Common, and then each may aſſign in that which belongs to him; adjudged. And yet by a Plea to the Writ by one, if found for by him, the Writ abates as to both. 29 *Aſſ.* 9. adjudged accordant; ſo 11 *H.* 4. 65. and yet ſee by *Hull,* the Tenant may aſſign a falſe Oath in an Aſſiſe between the Plaintiff and a Diſſeiſor; but adjudged, that he cannot aſſign it on a Plea to a Writ of Aſſiſe brought by another Name. 11 *H.* 4. 52, 65.

(*b*) And *Note*; In this Writ the Jurors ſhall not have the View, for the Writ does not require it; ſee 3 *H.* 4. 15. in an Attaint by the Plaintiff in Aſſiſe; yet *contra* 8 *Ed.* 2. *Aſſ.* 396. In Attaint by the Defendant in Aſſiſe. *Note*; In this Attaint, if it be brought by him who was barred in the Aſſiſe, he ſhall recover the Land, and his Damages and Coſts loſt in the firſt Aſſiſe, and the Iſſues until the Judgment rendered: But if the Tenant in the Aſſiſe had pleaded in Bar, *que ne conuſt ouſter*, the Attaint ſhall only inquire of that Matter, in which the falſe Oath is aſſigned, and not of the Seiſin and Diſſeiſin; adjudged 8 *H.* 4. 22. *Note*; If the falſe Oath be found, the Juſtices may inquire of the Damages by another Enqueſt. *Ibid.* See the Judgment in *Dyer* 235. *Quod recuperaret Seiſinam. Sed non per viſum Jurator'.*

The King to his beloved and faithful R. *and* B. *greeting: Know ye, that we* L *have conſtituted you,* &c. *our Juſtices, together with thoſe whom we have aſſociated unto you, to take a Jury of twenty-four Knights, which* A. *hath arraigned, before you by our Writ againſt* I. *to convict the Jurors in an Aſſiſe of Novel Diſſeiſin, which was ſummoned between them and taken before you at* W. *by our Writ, of Tenements in* S. or *of common of Paſture in* S. Or thus; *before you the aforeſaid* R. *and our beloved and faithful* S. *lately our Juſtices,* &c. *at* W. *by our Writ, of Tenements in* S. *and therefore we command you, that at a certain Day,* &c. *you ſhall appoint, you take that Jury to do thereupon that which to Juſtice belongs, according to the Law and Cuſtom of our Realm, ſaving to us the Amercements from thence coming: We alſo command our Sheriff of* Lincolnſhire, *that he cauſe that Jury to come before you at a certain Day and Place, whereof you ſhall give him Notice. In Witneſs whereof we have cauſed theſe our Letters to be made Patent. Witneſs,* &c.

And a Man ſhall have a Writ of Attaint upon a falſe Verdict in an Aſſiſe of Nuſance. *Wherefore he levied or proſtrated a certain Pool in* N. *&c.* or *a certain Ditch, or a certain Hedge*; or *diverted a Watercourſe, to the Nuſance of,* &c. *in the ſame Town,* &c. and the Form of the Writ is ſuch:

[109.] *If* A. &c. *then ſummon,* &c. *ready by Oath to recognize whether* J. *unjuſtly and without Judgment levied or proſtrated a certain Pool in* N. or *a certain Ditch,* or *a certain Hedge,* or *diverted the Watercourſe in* N. or *made narrow,* or *obſtructed a certain Way in* N. *to the Nuſance of,* &c. *in the ſame Town, after the firſt* &c. *whereof he the ſaid* A. *complains that the Jurors of the Aſſiſe which was ſummoned between them and taken before,* &c. *at* N. *by our Writ, have made a falſe Oath*; *and in the mean Time,* &c. *and ſummon,* &c. *And have there,* &c.

And it is a Rule in the Regiſter, That in an Attaint upon an Aſſiſe of A *Novel Diſſeiſin* a certain Day ſhall be ſet, as in Aſſiſe, *On* Monday *or other Day, on the Morrow, or on the Octave, or in fifteen Days of* Eaſter; but it behoveth that the Tenant have Garniſh out by fifteen Days in the Attaint, for the Statute doth not give leſſer Time, but only in Aſſiſe before the King.

And there is another Form of the Writ, if the Aſſiſe be adjourned into the B Common Pleas, and taken there before the Juſtices of the Common Pleas, and the ſame appeareth in the Regiſter.

(*a*) And another Form is of the Writ of Attaint, where the Aſſiſe is brought C againſt the Huſband and Wife, and the Wife is received for the Default of the Huſband, and pleadeth and loſeth by falſe Verdict.

(*a*) See 11 *H.* 4. 51, and 65. *per Brian*; Huſband and Wife brought a general Attaint on an Aſſiſe, where they had pleaded a Record, but failed at the Day. The Wife is received and adjudged (well). For in an Aſſiſe, the Huſband, notwithſtanding his Failure of Record and Default, *&c.* the Wife is Party to the Aſſiſe; for after ſuch Reſceit, the Seiſin and Diſſeiſin, it ſhall be inquired, and of Damages; but if it be in a *Præcipe,* it ought to be a ſpecial Attaint, becauſe there, by the Huſband's Default ſhe is out of Court; but here, if the one or the other be in Court, it is ſufficient. *Note*; In Attaint againſt a Vouchee, Tenant by Reſceit, either by him who joins in Aid, or by him who is received to ſue ſole; it was agreed that the Writ ſhould not be general *in Loquela quæ fuit int'* A. *&* B. *per breve noſtrum:* But it is neceſſary to

D And another Form of Attaint is, where the Tenant in the Aſſiſe pleadeth the Releaſe of the Plaintiff, or of his Anceſtor in Bar of the Aſſiſe which is found againſt them, upon a falſe Verdict.

E And another Form of the Writ of Attaint is, where the Verdict paſſeth by *Niſi prius* out of the Common Pleas.

F And another Form of the Writ of Attaint is, where the Aſſiſe is ſummoned before certain Juſtices, and after it is taken before other Juſtices by a general Commiſſion, and a falſe Verdict is given upon the ſame.

G And another Form of the Writ is, If an Aſſiſe be ſummoned before divers Juſtices, and afterwards is taken by any of them by Virtue of the Writ of *Si non omnes*, then the Party ſhall have a Writ of Attaint, rehearſing the whole Matter.

H And if a Man, upon Verdict given in an Aſſiſe before the Juſtices of Aſſiſe ſueth an Attaint before the ſame Juſtices, or (*a*) other Juſtices, he may have a Writ of Aſſociation directed unto the ſame Juſtices before whom the Attaint is laid; and the Writ of *Si non omnes*, as he ſhall have in Aſſiſe, *&c.* who was Plaintiff there: And he ſhall have a Writ Patent directed unto him who is Aſſociate, *&c.* which Writs do appear in the Regiſter after the Writs of Aſſiſe of *Novel Diſſeiſin.*

But it appeareth by one Writ in the Regiſter, that there was a Conſtitution made, which required, that the Aſſiſe and Jurors and Certificate ſhall be taken before the Juſtices commonly aſſigned: By which it ſeemeth, that a Man ſhall not have an Attaint upon a falſe Verdict given in Aſſiſe, but before the Juſtices of Aſſiſe, or before the Juſtices of the Common Pleas, if the Record be removed thither, or before the Juſtices of the King's Bench, if the Record be removed before the King; and the Form of the Writ is ſuch:

21 Ed. 3. 3. Br. Attaint 31. 21 Aſſ. 7. Br. Certificat de Aſſiſe 8. 21 Ed. 3. 10. Br. Att. 32. 8 H. 6. 4.

The King to his beloved and faithful F. *and* G. *greeting: Although we lately appointed you our Juſtices to take a Jury of twenty and four Knights, which* J. *who was the Wife of* E. *arraigned before you by our Writ againſt* E. *who was the Wife of* A. *of* L. *to convict the Jurors in an Aſſiſe of Novel Diſſeiſin, which between him the ſaid* A. *and the aforeſaid* I. *and others,* &c. *was ſummoned and taken at* L. *before our beloved and faithful* R. *and* B. *our Juſtices at the Aſſiſes,* &c. *aſſigned by our Writ, of Tenements in S. Becauſe the Appointment aforeſaid was made contrary to the Form of our Statute lately ſet forth at* Northampton, *in which is contained, that Aſſiſes, Attaints and Certifications be taken before the Juſtices commonly aſſigned, and not others: Which ſaid Statute in all and ſingular its Articles we willing inviolably to be obſerved, command you, that you in no wiſe intermeddle touching the taking of the Jury aforeſaid under Pretence of our Commiſſion ſo made. Witneſs,* &c. *Which ſaid Statute was made in the ſecond Year of* Ed. 3. *King of* England, *chap.* 2.

No Attaint upon Tenorem recordi, but upon the Record itſelf.

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have a ſpecial Writ, making Mention of the Original, and of the Tenant, *&c. per Cur'*; and ſo by *Paſton*, in an Attaint againſt the Garniſhee; but by *Babb.* and *Strange*, a general Writ ſhall be good, without Mention of the Default; if the Caſe be ſo, that the Garniſhee makes Title to the Land, *&c.* for the whole Judgment ſhall be againſt the Garniſhee, and he is not to have any Avail, but Prejudice by the Attaint. 9 *H.* 6. 38.

(*a*) See *per Hankſ.* That Attaint belongs to *B. R.*

By which it appeareth, That he ſhall not have a Writ of Attaint by Commiſſion, *&c.* before other Juſtices, but only before Juſtices of Aſſiſe, or of the Common Pleas, or King's Bench, as before is ſaid.

I (a) The Form of a Writ of Attaint upon a Rediſſeiſin is ſuch:

The King to the Sheriff, &c. *If* R. *ſhall make you ſecure,* &c. *then ſummon,* &c. *twenty-four lawful Knights,* &c. *ready,* &c. *Whether the Jurors, by whom a certain Inquiſition was taken before* E. *then Sheriff of your County, and Keeper of the Pleas of our Crown thereof, by our Writ, at* W. *between* R. *and the aforeſaid* B. *of a certain Rediſſeiſin done by the aforeſaid* B. *to the ſame* R. *as it is ſaid; of one Meſſuage and nine Acres of Land with the Appurtenances in* W. *have made a falſe Oath, as the ſame* R. *grievouſly complaining to us hath ſhewed; and in the mean Time do you diligently inquire who were the Jurors of that Inquiſition,* &c. *and have them then before the aforeſaid* R. *and* I. *and ſummon the aforeſaid* B. *that he be then there to hear that Recognition, and have there the Summoners,* &c.

Vi. 8 Eliz. Dyer 25. And it ſeemeth, That this Writ of Attaint ought to be ſued before the Juſtices of Aſſiſe of the ſaid County, and that they ſhall have a Patent for the ſame directed unto them, and that the Record ſhall be brought before them. But if the Record be removed into the Common Pleas, then it ſeemeth he ſhall have his Attaint there.

K And it appeareth by *Glanvile*, That a Man ſhall have an Attaint, and the Manner how the Jurors ſhall be puniſhed.

42 Ed. 3. 25. 8 H. 4. 23. Gaſcoigne. L. And if any Jurors be convict of falſe Oath, they ſhall be impriſoned, and then they ought to ſue unto the King to pay a Fine for their Impriſonment, and when they are agreed with the King, they may ſue a Writ for to remove the Record before the King in the King's Bench, and the Writ ſhall be ſuch:

By this it appeareth that they ſhall not forfeit their Lands in Fee, as upon Præmunire, but for their own Lives, by Br. Att. 100 & 95. upon the Book of 22 Ed. 4. 1.

The King to his beloved E. *and his Companions,* &c. *greeting: Whereas* W. *of* M. *and others, of a falſe Oath by them made in a certain Inquiſition taken at* W. *before* W. *of* B. *and his Companions lately Juſtices of the Lord the King,* &c. *of the Bench, by our Writ between* R. *Demandant, and* W. *of* M. *Tenant of the Manor of* B. *with the Appurtenances (except one Garden in the ſame Manor) before our beloved and faithful* W. *of* B. *and his Companions,* &c. *of the Bench, by* [110.] *a certain Jury of twenty-four have been convicted, and for that Reaſon adjudged to our Priſon of the* Fleet, *and their Goods and Chattels, Lands and Tenements, ſeized into our Hand; We, for certain Reaſons, have cauſed the Record and Proceſs of the Buſineſs aforeſaid, with all Things touching the ſame, together with the Bodies of the aforeſaid* W. *and others, to come before us, and now on the Behalf of him the ſaid* W. *we are beſought, that whereas he hath already been a long Time and ſtill is detained in ſuch Priſon, by reaſon of the Premiſſes, that we would receive of him a reaſonable Fine for the Impriſonment, for his Goods and Chattels, and Lands and Tenements aforeſaid, and alſo for the Eſtrepement of the*

(a) See 40 *Aſſ.* 23. 2 *H.* 4. 2. Attaint on a Rediſſeiſin; and it ſeems if the falſe Oath be found, it ſhall not impeach the Record, nor ſhall he be reſtored to the Poſſeſſion, but only be diſcharged of the Damages and the Fine; yet perhaps if the Party has Title by ſubſequent Feoffment from him who recovered, he ſhall be reſtored to the Poſſeſſion.

Lands and Tenements aforeſaid, and cauſe him to be delivered from the Priſon wherein he is ſo detained; we having Compaſſion of his State in this behalf, and being willing to do a ſpecial Favour to the ſame W. *do command you, that having ſeen the Record and Proceſs aforeſaid, and having had Conſideration of the Value of the Goods and Chattels, Lands and Tenements aforeſaid, and the Eſtrepement thereof, you receive a reaſonable Fine of the ſame* W. *for that which belongs to us in this behalf, and deliver him the ſaid* W. *from the Priſon wherein he is detained by occaſion of the Premiſſes, and ſo cauſe to be delivered to him his Goods and Chattels, Lands and Tenements being in our Hand, for the Fine abovesaid. Witneſs*, &c.

And thereupon the Party ſhall be fined, as the Juſtices of the King's Bench will aſſeſs in their Diſcretion; and upon that they ſhall grant a Writ to deliver his Goods and his Lands, and for to deliver him out of Priſon; and the Writ ſhall be ſuch: 43 Ed. 3. 26. See the Stat. 3 H. 8. c. 15.

The King to the Sheriff, &c. *Whereas* W. *of* M. *one of the Jurors in a certain Inquiſition taken at* W. *before* W. *of* B. *and his Companions, Juſtices of the Lord the King*, &c. (as above until) *our Juſtices of the Bench by our Writ of a falſe Oath by him the ſaid* W. *made by a Jury of twenty-four Knights was convicted, and for that Reaſon adjudged to our Priſon, his Goods and Chattels, and alſo his Lands and Tenements were ſeized into our Hand, as appears to us by the Inſpection of the Record and Proceſs aforeſaid, which we have cauſed to come before us, and he the ſame* W. *afterward came in our Court before us, and made a Fine to us for the Impriſonment aforeſaid, and to have his Lands and Tenements; we Command you, that without delay you cauſe the ſaid* W. *to have again all the Lands and Tenements of him the ſaid* W. *if they are in our Hand for that and no other Reaſon, and that you abſolutely ſuperſede the taking the Body of him the ſaid* W. *for the Reaſon aforeſaid. Provided nevertheleſs, that you anſwer to us for the Value of the Lands and Tenements aforeſaid from the Time of the Judgment upon the Verdict of the Jury aforeſaid given, until the Date of this Writ, and alſo for the Eſtrepement of the ſame, when it ſhall be inquired thereof. Witneſs* W. Thorpe, *&c. in the ſixth Year.* Roll 104.

A And there are divers other Manner of Forms of Writs of Attaint, which are not here mentioned, becauſe a Man may ſee them in the Regiſter.

Writ of Oyer *and* Terminer.

B THE Writ of *Oyer* and *Terminer* ſhould not be properly called a Writ; but it is a Commiſſion directed unto certain Perſons, when a great Aſſembly, Inſurrection, or a (*a*) heinous Miſdemeanor or Treſpaſs is committed and done in any Place. Then the Manner and Uſage is to make ſuch a Commiſſion of *Oyer* and *Terminer*, to hear and determine ſuch Miſbehaviour; and the Statute made 2 *Ed.* 3. *c.* 2. requireth, that no Commiſſion of *Oyer* and *Terminer* be granted but before the Juſtices of one Bench or other, or the Juſtices Itinerants, and that for horrible Treſpaſſes; and it is of the King's ſpecial Grace, according unto the Form of the Statute thereof made in the Time of the Grandfather of the ſaid King *Edward*; and the Form of the Commiſſion is ſuch:

(*a*) And therefore a *Superſedeas* may be hereto, *quia non enormis tranſgreſſio.* 12 *Aſſ.* 21.

C *The King to his beloved and faithful* A. B. *and* C. *greeting: We have received Information from the grievous Complaint of* D. *that* E. F. *and* G. *and certain other Malefactors and Diſturbers* (*a*) *of our Peace, with Force and Arms made an Aſſault upon him the ſaid* D. *at* N. *and him beat,* &c. *ſo that his Life was deſpaired of, and other Wrongs to him did, to the great Damage of him the ſaid* D. *and againſt our Peace. And becauſe we will not leave the Treſpaſs unpuniſhed, if it was committed in ſuch Manner, we aſſign you and two of you our Juſtices to inquire by the Oath of honeſt and lawful Men of the County of* Lincoln, *by whom the Truth of the Matter may be better known, of the Names of the Malefactors aforeſaid, who, together with the ſaid* E. F. *and* G. *committed that Treſpaſs, and the Truth of the Treſpaſs aforeſaid more fully, and to hear and determine the ſame Treſpaſs according to the Law and Cuſtom of our Realm; and therefore we command you that at certain Days and Places which you or two of you ſhall appoint for this Purpoſe, you make that Inquiſition, and hear and determine that Treſpaſs in Manner aforeſaid done, as to Juſtice belongs, according to the Law and Cuſtom of our Realm, ſaving to us the Amercements and other Things thereof belonging to us: For we have commanded our Sheriff of the County aforeſaid that, at the Days and Places which you or two of you ſhall make known to him, he cauſe to come* (*b*) *before you or two of you, ſo many and ſuch honeſt and lawful Men of his Bailiwick, by whom the Truth of the Matter in the Premiſſes may be better known and inquired. In Witneſs whereof,* &c.

[111.] And the Rule in the Regiſter is, That if this Clauſe, *And certain other Malefactors,* &c. be not put into the Commiſſion aforeſaid, then in the End ſhall be this Clauſe, *By whom the Truth of the Matter may be better known,* &c. *and the Truth of the Treſpaſs aforeſaid more fully, and to hear and determine the ſame Treſpaſs,* &c.

A And the Form of the Writ which ſhall be directed unto the Sheriff upon that Commiſſion, is ſuch:

The King to the Sheriff, &c. *From the grievous Complaint of* D. *&c.* (as above until) *we have aſſigned our beloved,* &c. A. B. *and* C. *and two of them our Juſtices to inquire by the Oath of honeſt and lawful Men,* &c. (until) *to hear and determine according to the Law and Cuſtom of our Realm: And therefore we command you, that at certain Days and Places which they the ſaid* A. B. *and* C. *ſhall make known to you, you cauſe to come before them or two of them, ſo many and ſuch honeſt and lawful Men of your Bailiwick by whom the Truth of the Matter in the Premiſſes may be better known and inquired, and have there this Writ,* &c.

B And the King may make a Writ of Aſſociation unto the Juſtices of *Oyer* and *Terminer,* to admit them into their Company whom the King hath aſſociated unto them; and the Form is ſuch:

The King to his beloved A. B. *and* C. *Know ye, that whereas lately upon the Complaint of* D. *ſuggeſting to us that* E. F. *and* G. *and certain other Malefactors and Diſturbers of our Peace,* &c. (until) *unpuniſhed, if it was committed in ſuch Manner, we aſſign you and two of you our Juſtices,* &c. (until) *to hear and de-*

(*a*) See an *Oyer* and *Terminer* for a Ward raviſhed, and Goods taken, and the Defendant found guilty, and thereupon a *Scire facias* iſſued. 29 *Ed.* 3. 37. See the like Writ, but *quære* of *quidam alii malefactores, &c.* becauſe not indicted. 26 *Aſſ.* 7.

(*b*) And note; If they award a *Venire facias,* without ſhewing (before) that it is returned, it is well, 29 *Ed.* 3. 30. but a *Venire facias* ought to be awarded, 26 *Aſſ.* 7.

termine the ſame Treſpaſs according to the Law and Cuſtom, &c. *We have aſſigned our truſty and well beloved* H. *to act in the Premiſſes with you or two of you; yet ſo that if at certain Days and Places, which you or two of you ſhall appoint for this Purpoſe, he the ſaid* H. *ſhall happen to be preſent, then that you admit him for a Companion for this Purpoſe in Form aforeſaid: For we have commanded him the ſaid* H. *that he attend to this Matter, together with you or two of you, as is aforeſaid. Witneſs,* &c.

And the Form of the Writ of Aſſociation, which ſhall be directed unto him who ſhall be aſſociated unto the Commiſſioners, is ſuch:

The King to his beloved and faithful H. *greeting: Know you, that whereas lately upon the Complaint of* D. *ſuggeſting to us that* E. F. *and* G. *and certain other Malefactors,* &c. *we have aſſigned our beloved,* &c. A. B. *and* C. *and two of them our Juſtices to inquire,* &c. (as in the Patent until) *and determine according to the Law,* &c. *we have aſſociated you to the aforeſaid* A. B. *and* C. *and two of them, to act in the Premiſſes with them or two of them; yet ſo that if at certain Days and Places, which the ſame* A. B. *and* C. *or two of them ſhall appoint for this Purpoſe, you ſhall happen to be preſent, then that they admit you a Companion for this Purpoſe, otherwiſe* A. B. *and* C. *or two of them (your Preſence not being expected) may proceed to act in the Premiſſes: And therefore we command you, that you attend to act in Form aforeſaid in the Premiſſes, together with the aforeſaid* A. B. *and* C. *or two of them,* &c. *ſaving to us,* &c. *For we have commanded the ſaid* A. B. *and* C. *that they admit you a Companion for this Purpoſe, as before is ſaid.*

C And then the King may ſend another Writ unto the ſaid Juſtices of *Oyer* and *Terminer* to proceed, although that all the Juſtices do not come at the Day of the Seſſions. And this Writ is called a Writ of *Si non omnes, &c.* and ſhall be directed as well unto that Juſtice as ſhall be ſo aſſociate, as unto the other Juſtices of *Oyer* and *Terminer*, and ſhall be ſuch:

The King to his beloved A. B. *and* C. *and* H. *greeting: Whereas lately upon the Complaint of* D. *ſuggeſting to us that* E. F. *and* G. *and certain other Malefactors,* &c. (until) *againſt our Peace, we aſſigned you the aforeſaid* A. B. *and* C. *and two of you our Juſtices,* &c. (until) *to hear and determine according to the Law and Cuſtom of our Realm, and afterwards aſſociated* H. *to act with you the aforeſaid* A. B. *and* C. *and two of you, in the Premiſſes: We command you, if you all cannot be conveniently preſent to act in the Premiſſes, then that you, three, or two of you, who ſhall happen to be preſent, proceed to act in the Premiſſes according to the Law,* &c. *Witneſs,* &c.

D And if the King made Commiſſioners of *Oyer* and *Terminer A. B.* and *C.* and afterwards by another Writ doth aſſociate unto them *J.* of *H.* who is admitted, *&c.* and afterwards *J.* of *H.* dieth; the King may make a new Aſſociation of other Perſons to the firſt Juſtices; ſo that Aſſociation ſhall be made and granted after Aſſociation; and he may make Aſſociation of two or three Perſons unto the firſt Commiſſioners, or to thoſe of them who are living, to continue the Proceedings, and to proceed to hear and determine the whole Matter, and that they do admit thoſe he doth aſſociate, or two or any of them to proceed upon the whole Matter; and ſuch Writ is in the Regiſter; and by that it appeareth, that by the Death of any of the Commiſſioners, the Matter ſhall not be diſcontinued; and the Writ of Aſſociation ſhall be Patent, and the Writ directed to the Juſtices of *Oyer* and *Terminer* to admit the others in their Society ſhall be cloſe. Poſt. 113. C.

And

E And if a Treſpaſs be done unto one in the Confines of two Counties, then the Party may ſue a Commiſſion of *Oyer* and *Terminer* directed to certain Perſons, to hear and determine the Matter; and the Form ſhall be ſuch:

The King to his beloved, &c. *We have received Information from the grievous Complaint of* D. *that* G. *with Force and Arms took and carried away the Goods and Chattels of him the ſaid* D. *to the Value of one hundred Pounds, found at* M. R. *and* N. *which are in the Confines of the Counties of* Norfolk *and* Suffolk, &c. (until) *our Juſtices to inquire by the Oath of honeſt and lawful Men of the Counties aforeſaid, by whom*, &c. *For we have commanded our Sheriffs of the Counties aforeſaid, that at certain Days and Places in the Confines of the Counties aforeſaid, which*, &c. *they cauſe to come before you in the Confines of the ſame Counties, ſo many and ſuch honeſt and lawful Men*, &c.

[112.] And the Writs directed unto the Sheriffs of two Counties ſhall be Cloſe. A

And a Commiſſion of *Oyer* and *Terminer* was granted upon a Reſcous made upon the King's Bailiff, where he diſtrained for Debts or Amercements to the King, and Reſcous was made upon him.

B And the King may grant certain Commiſſions *de Oyer & Terminer* of divers Treſpaſſes done by any Perſon at the Suggeſtion of divers Perſons, without nominating any in the Commiſſion, and then the Form of the Commiſſion beginneth in this Manner:

The King to his beloved, &c. *From the clamorous Complaints of divers Men of the County of* N. *often coming to our Hearing, that the Biſhop of* Wincheſter, &c. *many and divers Oppreſſions*, &c. And he ſhall have the like Writ unto the Sheriff to return the Panel.

C And if a Man have Goods and Merchandiſe in any Ship upon the Seas, which Ship is broken by Tempeſt, and the Goods caſt upon the Lands, theſe are no Wrecks, becauſe certain Perſons came alive to the Land, and the Merchandiſes, or Goods, are taken by Malefactors unknown, *&c.* The Party may have a Commiſſion of *Oyer* and *Terminer*, directed unto certain Perſons, to inquire of thoſe who did the Treſpaſs, and to hear and determine the ſame, and to make Reſtitution unto the Party, and a Writ unto the Sheriff to return *probos & legales homines*, *&c.* before the ſaid Juſtices, *&c.*

D And a Man may have Commiſſion of *Oyer* and *Terminer*, to inquire of Extortions, Oppreſſions, and other Miſdemeanors of Under-Sheriffs, Eſcheators, Bailiffs, Clerks of the Market, and all other Officers, upon the Complaint and Suit of any one that will ſue, and a Writ unto the Sheriff to return a Jury before the ſaid Juſtices.

E And alſo the King may direct his Writ unto the Sheriff, or unto Mayors or Bailiffs, to do as much as in them lieth and appertaineth to them, to remove ſuch Perſons from their Office, againſt whom it is ſuppoſed that any one will complain; or that he doth not put ſuch or ſuch into any Office, until Inquiry be made of their Carriage and Behaviour, *&c.*

F And if a Man ſueth a Commiſſion of *Oyer* and *Terminer* againſt divers Perſons for taking of his Goods and Chattels, and when they have taken them, they waſte, ſpend or eloin them; then the Party who ſued out the Commiſſion ſhall have a Writ unto the Sheriff, reciting the Matter, commanding him to ſtay the Goods, and to put them into ſafe Cuſtody, until it be otherwiſe provided and adjudged by the Juſtices of *Oyer* and *Terminer*, or by other Juſtices to be after aſſigned. And upon that Commiſſion of *Oyer* and *Terminer*, if it be found for the Plaintiff, the Juſtices may return the Goods to the Party and give him Damages, and therefore it varieth from the Action of Treſpaſs ſued before the Juſtices of the King's Bench, or the Common Pleas.

G And in the Time of the Vacation of a Biſhoprick, if any Perſon hunt in the Parks and Chaſes of the Biſhop, the King may ſend his Commiſſion of *Oyer* and *Terminer* to certain Perſons, to hear and determine, and enquire thereof; and the Writ ſhall be ſuch:

The King to his beloved, &c. *Know ye, that we have aſſigned you and two of you our Juſtices to enquire*, &c. *of the County*, &c. *by whom*, &c. *what Malefactors and Diſturbers of our Peace, with Force and Arms broke the Parks of* S. H. *and* A. *in the County aforeſaid, after they came to our Hands, by reaſon of the preſent Vacation of the Biſhoprick of* Chicheſter, *and in them, without our Licence and Will, chaſed and took and carried away the wild Beaſts, and other Wrongs to us there did, to the Loſs and Contempt of us, and againſt our Peace, and of the Truth of the Treſpaſs aforeſaid more fully, and thoſe Treſpaſſes to hear and determine according to the Law*, &c. *And therefore we command you, that at certain Days*, &c. *you make that Inquiſition, and the Treſpaſs*, &c. *determine in Form aforeſaid*, &c. *For we have commanded*, &c. *and inquired*, &c. *Witneſs*, &c.

H And if in the Time of the Vacancy of the Archbiſhoprick, any Perſon doth hunt in the Parks, or cut down the Woods, or fiſh in the Piſcaries of the Biſhop, *&c.* when the Archbiſhop is created, the King may ſend and grant the Commiſſion of *Oyer* and *Terminer*, to inquire and determine the Treſpaſs in the Time of the Vacancy; and the Form of the Commiſſion ſhall be,

The King to his beloved, &c. *We have received Information from the grievous Complaint of the venerable Father* W. *Archbiſhop of* York, *that certain Malefactors*, &c. *the Parks*, &c. (and recite in the Commiſſion all the Treſpaſs eſpecially) *and other Wrongs*, &c. *in manifeſt Contempt of us, to the Prejudice of the Archbiſhoprick aforeſaid, and the great Damage of the ſaid Archbiſhop, and againſt our Peace; and becauſe the Contempt and Treſpaſſes*, &c. *unpuniſhed*, &c. *we have aſſigned you*, &c. *to hear the Contempt and Treſpaſs, as well at the Suit of us, as of the aforeſaid Archbiſhop*, &c. *to determine according to the Law*, &c. *And therefore we command you*, &c.

But it is to ſee how it ſtandeth with the Statute of *Marlbridge*, *cap.* 28. that the Biſhop ſhall have an Action and puniſh a Treſpaſs done in the Vacancy of the Biſhoprick: But it ſeemeth it ſhall be ſo by theſe Words in the Statute, *That if any Wrongs be done to Abbots or other Prelates of the Church*, &c. And in the End of the Statute are theſe Words, *If any intrude into the Lands and Tenements of ſuch religious Perſons in the Time of Vacation, of which Lands their Predeceſſors died ſeiſed as in right of their Church*, &c. [113.] And it ſeemeth theſe Words *hujuſmodi religioſorum*, ſhall extend to Biſhops: As much as to ſay, the Biſhop ſhall puniſh a Treſpaſs done in Time of Vacation of the Biſhoprick, in cutting down of Trees, *&c.* for of Right the King cannot cut ſuch Trees; but for hunting in the Parks, or fiſhing in the Piſcaries, it ſeemeth the King ought to have the Action for the Treſpaſs done in the Time of the Vacancy; but if they do deſtroy all the Fiſh within the Fiſh-pools, or kill up all the Deer in the Parks in the Time of the Vacancy, it ſeemeth reaſonable, that by the Statute of *Marlebridge*, the Succeſſor have an Action for ſuch Treſpaſs: *Quære* of this Matter.

And it is intended, That the King of Right ought to keep and defend his Kingdom as well againſt the Sea, as againſt Enemies, that it be not drowned or waſted, and to provide Remedy for the ſame: And alſo to provide that his Subjects paſs by all Ways through the Kingdom with Safety; and therefore if the Sea Walls be broken, or the Sewers or Gutters not ſcowred, ſo as the freſh Waters cannot have their Courſes, the King ought to grant a Commiſſion to enquire thereof, and to hear and determine the Defaults; and the Form of the Commiſſion is ſuch: A

The King to his beloved A. B. *and* C. &c. *Whereas the Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, Gulfs, and Trenches in the Parts of* Holland *between the Croſs of* W. *and the Bridge of* E. *are in many Places in the Parts aforeſaid, ſo thrown down and broken by the Violence of the Sea, and the Reflux and Inundation of freſh Waters, that very many and ineſtimable Damages for want of Reparation of the ſame Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, and Gulfs, and by Obſtruction of the Trenches aforeſaid, have happened there in Times paſt, and greater are feared to happen in Proceſs of Time, unleſs a ſpeedy Remedy be hereupon in due Time applied: We, for that becauſe we are bound by reaſon of our Royal Dignity, to provide for the Safety of our Realm on every Side, willing to apply a fit and ſpeedy Remedy in this Behalf, have aſſigned you to ſuperviſe the Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, Gulfs, and Trenches aforeſaid, and to inquire as well by the Oath of Knights, as of other honeſt and lawful Men of the Parts aforeſaid, as well within Liberties as without, by whom,* &c. *may be better known, by whoſe Default ſuch Damages have there happened, and what Lands and Tenements they hold, or Common of Paſture, or Fiſheries in thoſe Parts, or alſo Defence, Benefit and Safety have, or after any Sort ſoever may have by the Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, Gulfs aforeſaid, and alſo the Damages they ſuſtain or may ſuſtain by the Trenches aforeſaid; and all thoſe Perſons, for the Quantity of their Lands and Tenements, or by the Number of Acres, or by Ploughlands according to the Proportions of their Tenures, or for the Quantity of their Common of Paſture or Fiſheries there, to diſtrain, and by Amercements, and in other Manner as you ſhall ſee better to be done, to puniſh them, together with the Bailiffs of Liberties and others of thoſe Parts, to repair ſuch Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, and Gulfs in the Places neceſſary, and as often as, and when need ſhall be, to make of new, and the Trenches aforeſaid, in Places neceſſary, to ſtop up, ſo that any Tenants of ſuch Lands or Tenements, or having Common of Paſture, or Fiſhery, Rich or Poor, or of whatſoever high Condition, State, or Dignity they ſhall be, who may have any Sort of Defence whatſoever by the aforeſaid Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys and Gulfs, or alſo ſuſtain or may ſuſtain Damage by the ſaid Trenches aforeſaid, whether they be within Liberties or without, be not ſpared in this Behalf: And therefore we command you, that at certain Days and Places which you,* &c. *ſhall appoint for this Purpoſe, you ſuperviſe the aforeſaid Walls, Ditches, Gutters, Sewers, Bridges, Cauſeys, Gulfs and Trenches, and do and fulfil all and ſingular the Premiſſes in Form aforeſaid, and that you cauſe firmly to be obſerved all Things which ſhall happen to be ordained and done by you in this Behalf, as well within Liberties as without. For we have commanded our Sheriff of* Lincolnſhire *that he cauſe to come,* &c. *ſo many and ſuch, as well Knights* *as other honeſt*, &c. *as well within Liberties as without, by whom the Truth of the Matter may be better known*, &c.

A And upon this Commiſſion, a Writ ſhall iſſue to the Sheriff, rehearſing the whole Matter in the Commiſſion, commanding him to return a Jury, *&c.* as appeareth by the Commiſſion. And if the Juſtices ſhall ſit by Virtue of that Commiſſion, and take divers Preſentments and Indictments, and award Proceſs upon them returnable at a certain Day, and afterwards all the Juſtices or ſome of them die, the King may grant a new Commiſſion to the Juſtices which are living only, or unto others, rehearſing the Death of him who is dead, or of thoſe who are dead; commanding them to continue the Proceedings begun, and to proceed upon that Proceſs, and to hear and determine all thoſe Defaults and Offences in the ſaid Commiſſion, the King reciting, that he hath ſent unto the Executors of thoſe who died, to ſend all the Rolls, Records, and Proceſs before the new Commiſſioners. And upon that Commiſſion, the King ſhall ſend a Writ unto the Executors of the Juſtices who are dead, to ſend the Rolls, Records and Proceſs as aforeſaid, forthwith under their Seals; and another Writ unto the Sheriff to make a Panel, and to return the ſame before the new Commiſſioners, and upon that Commiſſion the Juſtices ſhall make a Precept unto the Sheriff, that at a certain Day and Place he return before them the Panel according to their Commiſſion, and that he be there before at the ſame Day with the Precept. And this new Commiſſion ſhall be made as well to continue the Suits and Proceſs betwixt Party and Party, ſued before the Juſtices of *Oyer* and *Terminer*, as well as the Indictments and Preſentments made and found for the King. And the King may put into the Commiſſion a Command unto the ſaid Commiſſioners, to receive the Records and the Rolls, and Proceſs of the ſaid Executors. But ſee the Statute of Sewers, and eſpecially the Statute of King *Henry* the Eighth for that Matter.

Ant. 111. D.

[114.]

B (*a*) And if any *Engliſh* Merchant's Goods be ſpoiled, and his Good taken beyond the Seas by Merchants Strangers, and the *Engliſh* Merchant was beyond Sea to have Juſtice and Reſtitution made thereof, and could not obtain the ſame, and this Matter is teſtified unto the King in his Chancery: Now upon this Teſtimony, if the Merchants Strangers ſhall come into any Place within the Realm of *England* with their Goods; then the *Engliſh* Merchant ſhall have a Writ out of the Chancery, directed unto the Mayor or Bailiffs, where ſuch Merchants Strangers are with their Goods, to arreſt them and their Goods, and to keep them under Arreſt, until they have ſatisfied the Party his Damages, which he hath ſuſtained by Reaſon of their Miſdoing. And may have divers Writs, directed unto divers Ports or Towns, unto the Mayor or Bailiffs thereof, to arreſt ſuch Merchants and their Goods; and to detain them, until they have ſatisfied the *Engliſh* Merchant for the Treſpaſs which they have done unto him beyond the Seas. But it ſeemeth the *Engliſh* Merchant ſhall not have ſuch Writ, for any Debt due to him by Contract from a Merchant Stranger,

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(*a*) See a Commiſſion for Piracy on the Stat. of 28 *H.* 8. *cap.* 15. to be named by the Admiral or Lord Keeper, *Dyer* 212. and ſee the like Commiſſion at Common Law, *De captis a Francis poſt ſufferentiam.* Rot. Pat. 26 Ed. 1. m. 24. Dorſo.

Stranger, upon a Contract made beyond the Seas, if the Merchant do come into *England*, or his Goods; *Quære tamen* thereof. And the King ſhall recite in his Writ, which is directed unto the Mayor or Bailiffs, *&c.* how he hath ſent the like Writ unto the Mayor or Bailiffs of ſuch a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like Manner; and this Writ ſhall be ſued to attach all thoſe who did the Treſpaſs, and their Goods unto the Value of the Treſpaſs, which he ſuppoſeth he was endamaged.

And if certain Perſons ought to account unto a Corporation, as if the King C grant, to the honeſt Men of the Town of *N.* a certain Sum, out of Things which come to the ſame Town to be ſold, and there are Collectors to gather the ſame, who do ſo; the King may grant a Commiſſion to certain Perſons, to enquire what Perſons have received ſuch Sums, and to hear and determine the Matter, and to hear their Accounts thereupon, and do in that Caſe as Auditors ſhall do; and he ſhall ſend a Writ unto the Sheriff to return a Jury before the ſame Juſtices at the Day, *&c.* which they appoint, *&c.* to enquire thereof, and the Commiſſion is in the End of the Writ *Ex parte talis*, and before the Writs of Debt, in the Regiſter.

Writ of Conſpiracy.

18 Ed. 4. 1. Conſpiracy againſt two, one dieth pendant the Writ; per Curiam, the Writ ſhall not abate; and note by Finchden 43 Ed. 3. 32. that one ſhall anſwer if he appear.

A Writ of (*a*) Conſpiracy lieth where two, three, or more Perſons of D Malice and Covin do conſpire and deviſe to indict any (*b*) Perſon falſly, and afterwards he who is ſo indicted is acquitted; now he ſhall have this Writ of Conſpiracy againſt them who ſo indicted him. But this Writ lieth againſt two Perſons at the leaſt who do ſo conſpire; for if one Perſon of Malice and falſe Imagination do labour and cauſe another falſly to be indicted, the Party who is ſo indicted, ſhall not have a Writ of Conſpiracy, *&c.* but an Action upon the Caſe againſt him who ſo cauſed him falſly to be indicted.

Vide Statute 33 Ed. 1. de Conſpirationibus. Vide after E. F. G. Conſpiracy ſhall be againſt one, & econtr.

Note; if the Action be brought againſt divers, and all but one are acquit, the Action faileth. 28 Aſſ. 12. ſo if all but one are diſcharged by Matter in Law.

(*a*) One may be indicted of a Conſpiracy at the Suit of the King, and then he ſhall have a villainous Judgment. 24 *Ed.* 3. 34, 73. 43 *Ed.* 3. 33. But at the Suit of the Party he ſhall be only taken. 27 *Aſſ.* 59. Judgment on Indictment of Conſpiracy as in Attaint. 4 *H.* 5. *Judgment* 220. See the Form of the Judgment, where the Party was convicted, *&c.* on Indictment. 46 *Aſſ* 11.

(*b*) *Note*; If he be acquitted by Matter in Law, but not of the Fact, *&c.* as for that he did it *ſe defendendo*; or that he did it by Pretext of an Arreſt for Felony, and he reſiſted, and thereupon he killed him; in this Caſe no Conſpiracy lies, becauſe no Malice. 22 *Aſſ.* 77.

E If two Men conſpire to indict another, and afterwards he is indicted, for which he bringeth Appeal upon the ſame Indictment, and after is Nonſuit upon his Appeal after Declaration or before Declaration, the Party who was falſly indicted ſhall have a Writ of Conſpiracy, becauſe he is arraigned after the Declaration upon the Appeal, and is acquitted, and before the Declaration upon Nonſuit he ſhall be arraigned upon the Indictment, and if he be acquit, he ſhall have a Writ of Conſpiracy, *&c.* But if he be falſly indicted, and after an Appeal is ſued upon that Indictment, and he put no Anſwer unto the Appeal, and afterwards is acquitted by Verdict upon the Appeal, he ſhall not have a Writ of Conſpiracy in that Caſe, becauſe he is acquit upon the Appeal, and not upon the Indictment, *&c.* But upon Nonſuit in the Appeal a Conſpiracy doth lie for the Cauſe before mentioned.

34 H. 6. 9. per Priſot. Note; this Caſe proves that Conſpiracy lieth as well upon Appeal as Indictment for he is arraigned upon the Appeal, Stamford 172. that is, indicted at the Suit of the King. 19 Ed. Fitz. Conſpir. 12. 5 Ed. 3. ibid. 22.

F (*a*) And if two conſpire to cauſe a Man to ſue an Appeal againſt another of Felony or Murder, without any Indictment taken or found thereof, and after the Defendant is acquitted by Verdict, he ſhall not have a Writ of Conſpiracy againſt thoſe who conſpire to appeal him, becauſe that by the Statute of *Weſt.* 2. *c.* 12. *Quia multi per malitiam*, it ſhall be enquired of Abettors, if he be not indicted thereof; and if they be found, he ſhall have a *Scire facias* againſt them, out of the ſame Court where he is acquitted, to anſwer him his Damages. And ſo if he get a (*b*) Nonſuit in any ſuch Appeal, where there is not any Indictment, the Defendant ſhall have a Writ of Conſpiracy after the Nonſuit or after the Acquittal: But the Form of the Writ of Conſpiracy where he is acquit by Verdict, doth vary in Words in the End from the Writ of Conſpiracy which is founded upon the Plaintiff's Nonſuit in Appeal; for one Writ founded upon the Verdict is, *Until according to the Law*, &c. *he was acquitted*; and the other Writ of Conſpiracy founded upon the Plaintiff's Nonſuit is, *Until the ſame Complainant by Conſideration of our Court departed quitted thereof.* The Form of which Writ follows:

5 Ed. 3. Conſpiracy 22. 13 Ed. 3. Conſpiracy 25. the Abettors ſhall not be enquired of but where the Abetment is found by Enqueſt. 19 H. 6. 19. and 4 H. 6. 23. Nul tiel record is a good Reply in Conſpiracy.

[115.]

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *and* C. *that they be before us*, &c. *to ſhew* (*c*) *wherefore having before had Conſpiracy between them at* N. *they falſly and maliciouſly procured the aforeſaid* A. *to be indicted of privately ſtealing taking and leading away a certain Beaſt at* N. *and him to be taken upon that Occaſion and to be detained in our Priſon of* Warwick, *until in our Court before our beloved and faithful* R. *and* S. *our Juſtices aſſigned to deliver our Gaol of* Warwick, *according to the Law and Cuſtom*

22 Aſſ. 77.

(*a*) Nor ſhall one have Conſpiracy, if he be indicted or appealed, and arraigned and acquitted on the Appeal. 33 *H.* 6. 2. yet note; a Monk was appealed of Robbery and acquitted; he and his Abbot ſhall have a Writ of Conſpiracy, though he was acquitted by Verdict, *&c.* 24 *Ed.* 3. 73. *Ratio*, for that the Abbot, tho' not Party, ſhall have a *Scire facias*, for the Default of the Party on the Original.

(*b*) See 13 *Ed.* 3. *Conſpiracy* 25. 17 *Ed.* 2. *ibid.* 26. *Ratio*, becauſe the Writ is given on a Nonſuit in Appeal, and for that there is an Enquiry of the Abettors.

(*c*) *Conſpiraverunt, & confæderaverunt.* 19 R. 2. *Brief* 926.

of our Realm he was acquitted, to the great Damage of him the ſaid A. *and contrary to the Form of the Ordinance in ſuch Caſe provided. And have there the Names of the Pledges and this Writ. Witneſs*, &c.

The other Writ founded upon Nonſuit in Appeal is ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *and* C. *that they be before us*, &c. *to ſhew wherefore having before had Conſpiracy between them at* N. *they falſly and maliciouſly procured the aforeſaid* A. *to be appealed of the Death of* D. *lately ſlain at* E. *and him the ſaid* A. *to be taken upon that Occaſion and to be detained in our Priſon of* L. *until in our Court before us the ſame* A. &c. *by the Conſideration of our Court departed quitted thereof*, &c.

And if a Man cauſe one as Principal to be appealed of Felony or Murder, A
and another as Acceſſary to him, and afterwards is Nonſuit in his Appeal,
the Acceſſary ſhall have a Writ of Conſpiracy as well as the Principal.

33 H. 6. 1. And if the Principal, and one who is Acceſſary, be indicted of Felony,
34 H. 6. 9. and be taken and arreſted, and the Principal is indicted and acquitted, now
cont. if the Principal die by that the Acceſſary is diſcharged, and the Acceſſary thereupon ſhall have a
before he be Writ of Conſpiracy againſt thoſe who conſpired to indict him, and the Writ
attainted. in the End ſhall ſay, *Quouſque idem* (the Principal) *ſecund' leg'*, *&c. acquietat'*
fuiſſet, *& idem* (the Acceſſary) *quietus receſſit*.

(*a*) And a Man ſhall have a Writ of Conſpiracy upon an Indictment before B
any Mayor, Bailiff of any City or Borough, who have Gaol-delivery within
the City or Borough, if he be acquitted before them, *&c.* for that Acquittal
20 H. 6. 5. diſchargeth him of the Felony. But a Writ of (*b*) Conſpiracy doth not lie C
againſt the Indictors, *&c.*

7 H. 4. 31. If Jurors be ſworn to enquire, *&c.* and afterwards any of them is diſ- D
8 H. 4. 6. charged by the Juſtices, he ſhall not be puniſhed for what he did when he
21 Ed. 3. 19. was ſworn: But if he do conſpire after, he may be charged for the ſame in
47 Ed. 3. 17. a Writ of Conſpiracy. (*c*)

27 H. 8. 2. And he who cometh into Court, and diſcovereth Felonies, and is ſworn to
20 H. 6. 5. & 33. give Evidence to the Jury, is not chargeable in Conſpiracy. (*d*)

35 H. 6. 14. In a Conſpiracy againſt two, one pleaded to the Writ, and the other (*e*) E
& 19. Matter in Law, which is adjudged for him, and the Plea unto the Writ
14 H. 6. found by Verdict againſt him who pleaded unto the Writ; the Plaintiff ſhall
Conſpiracy 1. have Judgment againſt him who pleaded to the Writ: But if both had
pleaded Not guilty, and (*f*) one had been found guilty, and the other not,
there the Plaintiff ſhall not recover, for then he did not conſpire as is ſup-

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(*a*) See 27 *H.* 8. 2. 12 *Ed.* 4. 17. 7 *H.* 4. 1. 21 *Ed.* 3. 47. 21 *Ed.* 4. 1. 8 *H.* 4.

(*b*) *Quære*, If the Jurors in ſuch Caſe ſhall be puniſhed, if they conſpire before the Indictment. 47 *Ed.* 3. 16. 12 *Ed.* 4. 67. that they ſhall not, 27 *Aſſ.* 12.

Quære, If the Jurors procure themſelves to be impanelled. 9 *H.* 4. *fol. ult.*

(*c*) See 20 *H.* 6. 33. *Stamf.* 73. 20 *H.* 6. 34. *N. B.* 57. *contra.*

(*d*) See 27 *Aſſ.* 12. 27 *H.* 8. 2. 37 *Aſſ* 12. 35 *H.* 8. 15.

(*e*) See 14 *H.* 6. 15. accordant, for it may be a Conſpiracy.

(*f*) See accordant 33 *H.* 6. 1. 8 *Ed.* 3. 17. 8 *H.* 6. 1. 28 *Aſſ.* 12. 11 *H.* 4. 2. but if one be found guilty, and the other makes Default, 24 *Ed.* 3. 73. or be dead, 18 *Ed.* 4. 1. there he ſhall have Judgment againſt the one, tho' he had releaſed to the other. 22 *R.* 2. *Brief* 888.

poſed

F poſed by the Writ. But it may be that they did conſpire in the Caſe aforeſaid, although that the Matter in Law be adjudged for the Defendant. And if the Principal die before any Verdict given upon the Acquittal, or have a Pardon and plead it, then the Acceſſary ſhall not have a Writ of Conſpiracy, becauſe he is diſcharged by the Death of the Principal, or by the Pardon to the Principal.

Conſpiracy againſt two, one is attaint, the other makes Default, Judgment ſhall be againſt him, 24 Ed. 3. 34. but quære by Stamford 174. for 27 Ed. 3. it is holden, that one ſhall not anſwer without the other.

G If a Man be falſly indicted of Felony, and afterwards by Act of Parliament a general Pardon is granted of all Felonies, the Party now (*a*) ſhall not have a Writ of Conſpiracy, although he will plead unto the Indictment and is acquitted, and will not plead the Act, *&c.* becauſe his Life was not in Danger, and the Felony was diſcharged by the Act.

H The Juſtices of Gaol-delivery arraign a Priſoner for Murder within the Year, where an Appeal is depending againſt the ſame Priſoner, for the ſame Murder, which they know, (*b*) and yet they proceed and acquit him, he ſhall have a Conſpiracy, although he was not acquitted nor diſcharged of the Appeal: See the Statute of *An.* 3 *H.* 7. *cap.* 1. And before that Statute it was holden, 21 *H.* 6. by *Paſton* and *Newton*, that he ſhall have a Conſpiracy; for they ſaid he ſhould be hanged if he had been found guilty upon the Arraignment on the Indictment. And ſo the Statute *de Conſpiratoribus*, *temp. Ed.* 1. which Statute doth not determine in what Caſes a Conſpiracy ſhall lie. But by the Statute of 4 *Ed.* 3. *cap.* 10. which giveth the Juſtices of *Niſi prius* and of Aſſiſe, Power to hear and determine of Conſpiracies, Confedracies and Champerties, which they cannot determine in ſhort Time, they adjourn them *in Banco*, and ſhall be there determined.

21 H. 6. 28, 29. 17 Aſſ. 1. Br. Appeal 55. Raſtal Niſi prius 5. and note that before that Statute, they cannot arraign them at the King's Suit.

And if a Man be indicted or appealed of Treaſon or Felony, or a Treſpaſs done in a foreign County, *&c.* if he be acquit thereof, he ſhall have a Conſpiracy againſt him who procured him to be indicted or appealed, and ſhall recover treble Damages by the Writ upon the Statute of 8 *H.* 6. *c.* 80.

And if a Man be indicted of Felony or Treaſon, where there is not any ſuch Place within the County, he ſhall have Conſpiracy, and recover his Damages againſt the Abettors and Procurers or Conſpirators, by the Statute of 18 *H.* 6. *cap.* 12.

And the Form of the Writ for the Acceſſary in a Writ of Conſpiracy is, *Wherefore having before had Conſpiracy,* &c. *they falſly and maliciouſly procured the aforeſaid* A. *to be indicted for that becauſe he had abetted and procured*

(*a*) See accordingly by *Markham*, if the Indictment was abateable. 19 *H.* 6. 29. 9 *Ed.* 4. 12. 21 *H.* 6. 29.

(*b*) It ſeems ſufficient if the Writ be delivered to the Sheriff, who opens it and reads it to the Juſtices; but if they have no Notice, it is clearly no Plea: And ſee there, if the Son of one outlawed, or his Wife brings an Appeal of the Death of his Father, and the Party is acquitted, he ſhall be after arraigned at the King's Suit; otherwiſe by *Newton*, if the younger Son brings an Appeal. But in both Caſes he ſhall be again arraigned at the Party's Suit. 21 *H.* 6. 28, 29.

D. *who was the Wife of* E. F. *and* G. *to be appealed of the Death of* E. *her*
late Huſband, before J. *and his Companions lately our Juſtices to hear and determine*
that Appeal, and him to be taken and impriſoned upon that Occaſion, and to
[116.] *be detained in our Priſon of* Lincoln, *until he was acquitted thereof before our*
aforeſaid Juſtices according to the Law and Cuſtom of our Realm, &c.

And there are divers other Writs of Conſpiracy grounded upon Diſceit, and A
Treſpaſs done unto the Party, which are properly Actions of Treſpaſs upon
the Caſe; as if two Men do conſpire to indict another Man becauſe he did
not arreſt a Felon, who paſſed by the Town of *N.* and becauſe they cauſed
him to be indicted and amerced in the Leet of *R.* and *F.* and took and impriſoned
him for that Amercement until he be acquit in the ſaid Leet.

4 Co. 18. And if Men ſay and affirm unto *A.* that he hath Right unto ſuch Land, B
and procure and cauſe him to ſue an Action for the ſame againſt *B.* who is
Tenant of that Land, *&c.* by which he is of Neceſſity compelled to ſell other
Lands or Tenements for the Defence of his Land, *&c.* now he ſhall have
an Action (*a*) againſt thoſe who procure or conſpire to cauſe *A.* to bring his
Action, *&c.*

And if two Men procure or cauſe one to be indicted for hunting in another's C
Park, for which he is taken, impriſoned, and put to Charges, until
he hath acquitted him of the Treſpaſs, he ſhall have a Conſpiracy againſt
them (*b*).

46 Ed. 3. 20. And Conſpiracy ſhall be maintainable againſt thoſe who conſpire to forge D
39 Ed. 2. 13. falſe Deeds which are given in Evidence, by which his Land is loſt.

Fitz. Conſpiracy 9. Conſpiracy ſhall be maintainable againſt thoſe who conſpire to bring an Aſſiſe E
42 Ed. 3. 14. in the Name of the Plaintiff againſt a Defendant, and to make one Attorney
for the Plaintiff, in which Aſſiſe the Plaintiff was found Villain, *&c.* now
he may bring this Writ of Conſpiracy.

3 Aſſ. 13. And Conſpiracy ſhall be maintainable againſt thoſe who conſpire to indict F
11 H. 7. 25. one of Treſpaſs, *&c.* whereof he is acquitted, *&c.*

And Conſpiracy ſhall be maintainable, becauſe the Defendant made one to G
preſent in the Name of the Plaintiff unto an Advowſon, and for that preſenting
40 Ed. 3. 19. unto the Biſhop, who is admitted and inſtituted, *&c.*

47 Ed. 3. 15. If one conſpire to cauſe a falſe Office to be found of my Land, which is H
But the Office found by his Procurement, *&c.* I ſhall have a Writ of Conſpiracy.

ought to be ſufficient. In a Conſpiracy againſt two, one juſtifies becauſe he was then Juſtice by I
Commiſſion, when the Plaintiff was indicted before him, *&c.* and for any
Conſpiracy before, he pleaded Not guilty.

8 H. 4. 6. And a Writ of Conſpiracy for indicting of Felony doth not lie but againſt K
11 H. 7. 26. two Perſons at the leaſt; but a Writ of Conſpiracy for indicting one of
Treſpaſs or other Falſity made, as in the Caſes aforeſaid, lieth againſt one
Perſon only.

38 Ed. 3. 3. And a Man ſhall not have a Writ of Conſpiracy for indicting him of Felony, L
againſt Huſband and Wife, becauſe they are but one Perſon; but againſt
Huſband and Wife and a third Perſon it well lieth. *Stamf.* 174.

(*a*) See *contra* 38 *Ed.* 3. 3. And that he ought to ſhew in his Writ who ſued the Action.
(*b*) 7 *H.* 4. 31. 3 *Aſſ.* 6. 11 *H.* 7. 26.

But if the Writ of Conſpiracy be brought againſt two, then it ſhall be ſaid properly a Writ of Conſpiracy. But if it be brought againſt one Perſon only, then it is but an Action upon the Caſe upon the Falſity and Deceit done, becauſe one Perſon cannot conſpire with himſelf.

M And the Writ of Conſpiracy may ſuppoſe the Conſpiracy to be in two 9 H. 6. 30.
ſeveral Places, and ſhall be good; and the Writ ought to be brought in the 22 H. 6. 49.
County where the Conſpiracy is made, and not where the Indictment was, or where the Deed was done, *&c.*

N There is alſo another Writ of Conſpiracy which is given upon the Statute called *Articuli ſuper Chartas*, 28 *Ed.* 1. *cap.* 10. which Writ ſhall be directed unto the Juſtices of Aſſiſe to enquire of the Conſpiracy; and the Writ ſhall be ſuch:

The King to his beloved and faithful W. *of* S. *and his Companions*, &c. *aſſigned, greeting: Whereas among other Articles which Lord* Edward *formerly King of* England *our Grandfather granted for the Amendment of the Eſtate of his People, it is ordained, That of Conſpirators, falſe Informers, and evil Procurers of Dozens Inqueſts, Aſſiſes, and Juries, the Juſtices of the one Bench, and the other, and Juſtices aſſigned to take Aſſiſes when they come into the Country to do their Office, ſhall upon every Plaint made unto them award Inqueſts thereupon without Writ, and ſhall do right unto the Plaintiff without Delay, as in the Articles aforeſaid is more fully contained: We, willing that the ſaid Articles in all Things to be inviolably obſerved, command you that having looked into the Ordinance aforeſaid, you further willingly do, at the Proſecution of all and ſingular Perſons complaining before you, that, which according to the Form of the Ordinance aforeſaid ſhall be fit to be done. Witneſs*, &c.

O And upon that he ſhall have an *Alias* and a *Pluries*, and Attachment againſt the Mayor or Sheriff, *&c.* if they do not according to the Writ ſent unto them, or return the Cauſe why they cannot do the ſame; and it ſeemeth reaſonable that the Party in Priſon ſhould have an Action upon that Statute againſt the Recognizor, if he find him not Bread and Water in Priſon, *&c.* according to the Statute.

(*a*) *Writ of Account.*

9 H. 6. Account 8. A Writ of (*b*) Account lieth divers Ways; for if a Man make one his Bailiff of his Manor, *&c.* he ſhall have a Writ of Account againſt him as Bailiff. P

6 R. 2. Belk. Account 47. And if a Man make one his Receiver, to receive his Rents or Debts, *&c.* he ſhall have a Writ of Account againſt him as Receiver.

14 H. 4. 80. And if a Man make one his Bailiff, *&c.* and alſo his Receiver, then he ſhall have an Account againſt him as Bailiff, and alſo as Receiver.

[117.] 29 H. 6. Fitz. Account 6. 36 H. 6. 10. 10 R. 2. Account 45. ac. (*c*) A Man ſhall have a Writ of Account againſt one as Bailiff or Receiver, where he was not his Bailiff or Receiver; for if a Man receive (*d*) Money for my Uſe, I ſhall have an Account againſt him as Receiver; or if a Man do deliver Money unto another to deliver over unto me, I ſhall have an Account againſt him as my Receiver. Q

(*e*) And ſo if a Man enter into my Land to my Uſe, and receive the Profits thereof, I ſhall have an Account againſt him as Bailiff. A

Vi. 43 Ed. 2. 21. Thorpe. And ſo if the Father doth occupy the Land of an Infant, which the Infant hath purchaſed, or hath by Purchaſe, the Infant ſhall have an Account againſt him as Bailiff of his Lands; and this Writ of Account may be ſued as well in the County as in the Common Pleas. B

(*a*) *Note*; No Damages ſhall be in Account, becauſe all ſhall be caſt, conſidered by the Auditors as Arrearages. 7 *H.* 6. 36. *per Martyn.* 2 *R.* 2. *Account* 45.

(*b*) *Note*; The Writ and Count *a tempore quo fuit Ballivus manerii de* S. *& habuit adminiſtrationem bonorum, &c.* if it be found *quod habuit adminiſtrationem bonorum*, altho' he be not *Ballivus manerii*, the Plaintiff ſhall recover, becauſe there is no other Writ. *Kelw.* 114. So *Ballivus Domus* ſhall be charged for Goods delivered to him as Bailiff in Account. 2 *R.* 2. *Account* 46. See an Account againſt a Bailiff of Woods, and of what Things he ſhall anſwer, 34 *Ed.* 3. *ibid.* 131. See 9 *Ed.* 4. 40. 9 *Ed.* 3. 37.

(*c*) If a Man holds certain Lands of me by the Service of being my Bailiff of my Manor, I ſhall have Account againſt him, tho' he never took the Profits, becauſe he is my Bailiff by his Tenure; *per Fitzh.* 18 *H.* 8. 5.

If I deliver a Tun of Wine, or Laſt of Herrings, *&c.* to ſell, and the Bailiff ſell them; I ſhall not have Account againſt him for the Money as Receiver, for he had no Allowance of Coſts for his Labour; but I may have Account againſt him as Bailiff. 43 *Ed.* 3. 21. 46 *Ed.* 3. 9. 4 *H.* 6. 27.

Note; A Bailiff ſhall have Allowance of caſual Things of common Courſe, paid or done by him without any Command, as for Relief; but not for other caſual Payments, if he has not a ſpecial Command, *&c.*

Note; A Bailiff ſhall not have Account againſt his Maſter for a Surplus on Account. 41 *Ed.* 3. *Account* 33. *Quære.*

Note; A Receiver of Monies is not compellable to make Adventure, for Doubt of Loſs; and therefore if he makes Oath, that he did not find any Thing that he dared to buy for Doubt of Loſs, the Plaintiff ſhall be thereby bound to receive his principal Sum; for if he had Loſs, the Maſter is bound to ſuſtain it. 46 *Ed.* 3. *Account* 40.

(*d*) Yet if one receive to my Uſe, Money ſealed up in a Bag, as my Servant, Account does not lie againſt him. 29 *Ed* 3. 20. 20 *H* 6. 16. See 6 *H.* 4. 8. 2 *H.* 4. 12. 13 *H.* 4. 1. 41 *Ed.* 3. 10, 22. 33 *H.* 6. 2. 6 *Ed.* 3. 12. *F. Baily* 4.

(*e*) Account lies againſt him who receives my Rent without my Appointment, 11 *H.* 4. 65. *per Thirn.* but not againſt him who enters into the Lands of one of full Age, or an Infant not Tenant in Socage, 13 *Ed* 3. 35. *Dyer* 277. but in the King's Caſe he ſhall be charged as Bailiff, if he has no Title. 33 *H.* 6. 3. *per Priſot.* 4 *H.* 7. 6.

If

C If a Man have Cauſe to have an Account againſt one as Bailiff or Receiver, if he die (*a*) his Executors ſhall have the Action: But an Account doth not lie againſt (*b*) the Executors of a Bailiff or Receiver, for the Receit or Occupation of their Teſtator. And the Writ of Account which ſhall be ſued in the County, is a *Juſticies* directed unto the Sheriff, which is ſuch (*c*):

19Ed. 3 Fitz. Account 56. The Writ of Account is given to Executors by Statute, and was not at the Common Law.

The King to the Sheriff of Lincolnſhire, *greeting: We command you that you Juſtice* A *that juſtly and without Delay he render to* B. (*d*) *his reaſonable Account for the Time in which he was his Bailiff in* N. *and Receiver of the Money of him the ſaid* B. *as he may reaſonably ſhew that he ought to render to him, that we may hear no more Clamour thereupon for want of Juſtice. Witneſs*, &c.

And for Executors the Writ is,

That he render to B. *and* C. *Executors of the Teſtament of* D. *his reaſonable Account for the Time in which he was the Bailiff of him the ſaid* D. *in* N. *and Receiver of the Money of him the ſaid Deceaſed, as he may reaſonably ſhew*, &c.

D If two Merchants occupy their Goods and Merchandizes in common unto their common Profit, one of them ſhall have an Action of Account againſt the other in the County, or in the Common Pleas; and the Writ in the County ſhall be,

The King to the Sheriff, &c. *We command you that you Juſtice* A. *Merchant that juſtly*, &c. *he render to* B. *Merchant a reaſonable Account* (*e*) *for the Time in which he was Receiver of the Money of him the ſaid* B. *from whatever Cauſe and Contract coming to the common Profit of them the ſaid* A. *and* B. *as by the Law of Merchants he may reaſonably ſhew that he ought to render to him*, &c.

And this Clauſe *Ex quacunq' cauſa & contractu*, ought to be put in every ſuch Writ, whether it be ſued in the Common Pleas or in the County.

Two purchaſe a Manor for Life, and one taketh upon him to be Bailiff to the other, no Account lieth by 8 Ed. 2. Account 115. & 21 Ed. 3. ibid. 66.

E And the Executor of one Merchant ſhall have ſuch Writ againſt the other Merchant, but not againſt his Executor:

The King to the Sheriff, &c. *Command* A. *that he render to* B. *a reaſonable Account for the Time in which he was Receiver of the Money of him the ſaid* A. or *Bailiff of him the ſaid* A. *and unleſs he will do it, and the aforeſaid* A. *ſhall make you ſecure of proſecuting his Claim, then ſummon the aforeſaid* B. *that he*

30 Ed. 1. Account 127. Note, that in a Writ which ſuppoſeth that de tempore quo fuit receptor denariorum, the Defendant ſhall not ſay, that he hath accounted from ſuch Time to ſuch Time, but ought to ſhew certain for what Things he hath accounted. Contra where the Writ is, a tempore quo fuit Ball'. 3 Ed. 3. Account 61.

(*a*) And ſo of a Succeſſor, &c. 31 *Ed.* 3. *Account* 57, & 124. *contra* of an Heir. 19 *Ed.* 3 *ibid.* 56 See 10 *H.* 7. 10. *Stat. W.* 2 *c.* 23. and the Executor of an Executor, 25 *Ed.* 3. 5. and to an Adminiſtrator. 31 *Ed.* 3. 11. See *Co. Lit* 89 *b.*

(*b*) But if the Bailiff's Executors do account with *J. S.* of their own Agreement, *J. S.* ſhall have Debt on the Arrears or Ballance of ſuch Account. See Account againſt them as Executors, 2 *H.* 4. 13.

(*c*) Account againſt a Bailiff, ſhall be brought in the County where he was Bailiff, but againſt a Receiver it may be in any County. 30 *Ed.* 3. 20. See Account *de tempore quo fuit Receptrix vel Balliva* againſt a Feme, 19 *H.* 6. 5.

(*d*) *Note*; This Writ lies but in Account, and therefore it is a good Plea to ſay, fully accounted with the Plaintiff himſelf, or before Auditors, &c. for after ſuch Account made, the Action of Account is gone; but he may have Debt on the Arrears or Balance of the Account, 7 *H.* 4. 14. 34 *H.* 6. 43. but it ought to be before Auditors, aſſigned by him with whom the Account is. 29 *Ed.* 3. 40.

(*e*) See 30 *Ed.* 1. 127. accordant. 10 *Ed.* 3. 7. 14 *Ed.* 3. *Account* 60. 19 *Ed.* 2. *Brief* 839 or 829. *Mich.* 14 *Jac.* 1. *Rot.* 189. *in B. R.* See alſo 10 *H.* 7 16. 14 *Ed.* 3. 11 *H.* 4. 79. *contr.* 19 *Ed.* 2. *Brief* 893. 19 *Ed.* 2.

be before our Juſtices at Weſtminſter *in fifteen Days of* Eaſter, &c. *to ſhew wherefore he will not do it: And have there the Summoners and this Writ*, &c.

And a Prior or Abbot or Maſter of an Hoſpital ſhall have a Writ of Account F againſt him who was Receiver or Bailiff in the Time of their Predeceſſor; and the Form of the Writ ſhall be ſuch:

Command A. *that he render to* I. *Prioreſs of* S. *a reaſonable Account for the Time*, &c. *Bailiff of* Alice *formerly Prioreſs of* S. *Predeceſſor of the aforeſaid* I. *and Receiver of the Money of her the ſaid* Alice *Prioreſs*, &c.

And another Writ thus: *Command* A. *that he render*, &c.

4 Ed. 3. pl. 8. 14 H. 4. Account 124. 4 Ed. 2. 17. ibid. 97. 31 Ed. 3. Account 57. 25 Ed. 3. 45. in the like Action the Defendant ſaid that he was not Receiver of the Predeceſſor, and admitted good. 20 Ed. 3. Account 78. Account lies againſt an Abbot notwithſtanding the Receipt was by the Predeceſſor.

And another Writ thus: *Command* A. *that he render to the Commonalty of the Town of* W. *his reaſonable Account for the Time*, &c. *in which he was Receiver of the Money of the ſaid Commonalty in* W. *And unleſs*, &c. *And the ſaid Commonalty ſhall make you ſecure*, &c.

And note, that the Writ of Account ſued in the County, may at the Suit of G the Plaintiff be removed into the Common Pleas by a *Pone*, without any Cauſe ſhewed in the Writ, but ſhall not be removed out of the County by the Defendant, without Cauſe ſhewed in the *Pone*, *&c.* As if the Defendant plead a foreign Releaſe, then it ſhall be ſaid in the *Pone*, *Becauſe the aforeſaid Defendant in pleading in our Court in* N. *in which the Plea dependeth by return of our Writ, hath produced a certain Writing of Acquittance under the Name of him the ſaid* A. *containing in itſelf that he the aforeſaid* A. *had releaſed all Actions which he had againſt the aforeſaid* B. *the Defendant by Reaſon of the Account aforeſaid, to him the ſaid* B. *in the County of* Lincoln *made as it is ſaid, which ſaid Writing the aforeſaid* A. *hath abſolutely denied*; *wherefore becauſe that Plea ought not to be further carried on in the Court aforeſaid, let Execution of this Writ be done, if the Cauſe be true, and otherwiſe not.*

Vi. 4 Ed. 2. Br. 791. Where it is holden, if he hath any Land, it is ſufficient; but there he had in the Right of his Wife, but 6 *s.* 8 *d.* and had not Title to be Tenant by the Curteſy, therefore not ſufficient.

There is another Manner of Writ of Account founded upon the Statute of H *Marlbridge*, *cap.* 23. And that Writ lieth (*a*) where a Man ought to make Account as Bailiff or Receiver, and hath no Lands nor Tenements by which he may be diſtrained, but is vagrant in ſecret Places, where he will not be found, then the Plaintiff ſhall have a Writ of Account, which is called *Monſtravit*, upon the Statute, and the Writ is of this Form:

The King to the Sheriff, &c. *The Prior of* N. *hath ſhewed unto us, That whereas* A. *was his Bailiff in* K. *having the Care and Adminiſtration of all his Affairs and Goods, the ſame* A. *his Account not being paid, ſeeking Subterfuges, lies hid in your Bailiwick, nor can he be found and diſtrained to render to the ſaid Prior his Account aforeſaid: And becauſe by the Common Council of our Realm it is provided, That if Bailiffs who are bound to render their Account to their Lords do withdraw themſelves, and have not Lands or Tenements whereby they may be diſtrained, they ſhall be attached by their Bodies, ſo that the Sheriff in whoſe Bailiwick they be found, ſhall cauſe them to come to render their Account*; *We*

(*a*) And *Note*, that Lands of which he is ſeiſed in Right of his Wife, are not Lands within the Statute, on the Point in Iſſue, whether he had ſufficient Lands, 4 *Ed.* 2. *Brief* 791. in the ſame County. 6 *H.* 6. *Brief* 806.

command you, that if the aforeſaid Prior ſhall make you ſecure of proſecuting his Claim, then attach the aforeſaid A. *ſo that you may have him before our Juſtices,* &c. *ſuch a Day, to render to the aforeſaid Prior his Account aforeſaid, as he may reaſonably ſhew that he ought to render to him,* &c. *And have,* &c.

But this Writ is not now in Uſe, becauſe that by the Statute of *Weſt.* 2. [118.] *cap.* 12. made after the Statute of *Marlbridge*, Proceſs of Outlawry is given in a Writ of Account againſt Bailiffs and Receivers; but yet he may ſue a *Monſtravit* at this Day, if he will; and the Form of the Writ of *Monſtravit* directed unto the Sheriffs of *London* is ſuch:

The King to the Sheriffs of London, *greeting:* A. *hath ſhewed unto us, that whereas* B. *was Receiver of the Money of him the ſaid* A. *and his Bailiff in* N. *the ſame* B. *his Account not being paid, ſeeking Subterfuges, lies hid in your Bailiwick,* &c. *We command you, that if the aforeſaid* A. *ſhall make you ſecure of proſecuting his Claim, then attach the aforeſaid* B. *ſo that you may have him before the Mayor of our City of* London *and yourſelves, at your next Huſtings in* London, *to render to the aforeſaid* A. *his Account aforeſaid, as,* &c. *And have,* &c.

And the Receivers and Bailiffs may be put in one Writ in the *Monſtravit*, thus: *Receiver of the Money of him the ſaid* A. *and his Bailiff in* N. But if the Writ be ſued in the Common Pleas, then the Bailiff muſt be put, *As his Bailiff and Receiver of the Money of him the ſaid* A. *in* N.

A (*a*) And a Writ of Account lieth againſt Guardian in Socage; but the Form of the Writ doth vary from the Form of the Writ againſt the Bailiff, *&c.* and the Form is ſuch:

See that in Account againſt one as Bailiff and Receiver, the Defendant ſaid, that he was Guardian in Socage, and not Bailiff, and good; per 32 Ed. 3. Account 60.

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure,* &c. *then ſummon,* &c. B. *that he be before our Juſtices,* &c. *to ſhew wherefore, whereas it is provided by the Common Council of our Realm, that Guardians of Lands and Tenements* (*b*) *which are held in Socage, ſhall give to the Heirs of thoſe Lands and Tenements* (*c*), *when they ſhall come to full Age, their reaſonable Account of the Iſſues forth coming of thoſe Lands and Tenements, for the Time in which they had that Wardſhip by reaſon of the Minority of the Heirs aforeſaid, he the ſaid* B. *refuſeth to render to the aforeſaid* A. *his reaſonable Account of the Iſſues forth coming of his Lands and Tenements in* N. *which are holden in Socage, and whereof the ſame* B. *had the Wardſhip while the aforeſaid* A. *was under Age, as it is ſaid. And therefore,* &c.

13 Ed. 3. Account 77.

Notwithſtanding that he be no Guardian in Droit, if the Defendant hath the Occupation or Manurance of the Land, the Action lieth, per 32 Ed. 3. Account 59. Fitz. 27.

(*a*) No *Capias* or Exigent lies in Account againſt a Guardian, 17 *Ed.* 3. 50. but if the Defendant comes in by *Capias*, he ſhall be put to anſwer, for it is only a Miſcontinuance. 29 *Ed.* 3. 5.

(*b*) And therefore it is a good Iſſue, *quod non tenentur in Socagio,* 13 *Ed.* 3. *Account* 77. 22 *Ed.* 4. 5. that they are held in Chivalry *per Defendentem & non in Socagio.* 11 H. 6. 7.

(*c*) And ſo *note;* The Occupation charges him, though he be not *Prochein amy*, 29 Ed. 3. 5. 4 Ed. 3. 107. accordant. But it ſeems *contra* if he held in Chivalry, although the Party has no Colour. 13 *Ed.* 3. *ibid.* 77. *Co. Lit.* 89.

(*a*) And

V. Old N. B. 9. and after 149. B. for Admeaſurement of Dower by Infant. 16 Ed. 2. Account 30. 3 & 4 Mar. Dyer 137.

(*a*) And if a Man during the Minority of the Heir enter into the Land of the Heir which he hath by Deſcent, and take the Profits to the Uſe of the Heir, the Heir at full Age ſhall have an Account againſt him as Guardian for the Profits received until he come to the Age of fourteen Years; and for the Profits received after the Heir comes of the Age of fourteen Years, he ſhall have a Writ of Account againſt him as Bailiff, and not as Guardian; for he cannot be Guardian longer for Socage Lands but till fourteen Years of Age: But the Heir ſhall not have an Action of Account againſt him as Guardian, until the Heir be of the full Age of Twenty-one Years, and that by the Words of the Statute, which are *Qui cum ad ætatem pervenerit*, *&c.* But he ſhall have an Action of Account againſt him as Bailiff during his Nonage, at what Time he will againſt him who taketh the Profits of the Land which he hath by Diſcent, be he Guardian in Socage in Right, *&c.* B

6 Ed. 3. pl. 12. a Caſe contra.

And a Writ appeareth in the Regiſter, that if a Man be found in Arrearages upon his Account, and the Party Plaintiff (*b*) do arreſt him in *London* for thoſe Arrearages, then he may ſue a Writ in Chancery directed unto the Sheriff, rehearſing the whole Matter, commanding the Sheriff to detain and keep in Priſon him who is ſo arreſted, until he hath ſatisfied and paid the Arrearages. And it ſeemeth by the ſame Reaſon, that if a Man ſue an Action of Debt upon Arrearages of Account before Auditors, and hath the Party arreſted, that he ſhall have a Writ out of the Chancery unto the Sheriff, to keep him in Priſon until he hath paid thoſe Arrearages; but I conceive this Writ doth not ſtand in Law, that he ſhall be kept in Priſon without anſwering unto the Suit commenced againſt him. C

19 H. 6. 4.

(*a*) If one enters and claims the Land as Guardian in Chivalry, where the Land is held in Socage, he ſhall be only Bailiff to the Infant, 28 *Aſſ.* 13. 34 *Aſſ.* 10. and the Heir may have Account againſt him as Guardian in Socage. 10 *H.* 6. 7. *per Cott.* 41 *Ed.* 3. *Account* 35. 32 *Ed.* 3. *Account* 59. And *note*; the Account of Guardian in Socage is only for the Iſſues of the Land, for if he receive other Monies, he ſhall be charged as Receiver. 32 *Ed.* 3. *Account* 60.

Note; The Power of a Guardian in Socage is gone by the Taking of a Huſband by the Infant, and yet they ſhall have Account againſt the Guardian, if he continues after. 10 *R.* 2. *Account* 132. See *Lit* 27. *contra* 4 *Ed.* 3. *Account* 107. 12 *H.* 7. 26. 16 *Ed.* 2. *Account* 20. 29 *Ed.* 3. 5. *contra.* See alſo 33 *H.* 6. 2. 2 *H.* 4. 12. That it lies not againſt a Diſſeiſor.

If a Feme Guardian in Socage takes Huſband, Account lies againſt both; and *note*; the Age there was tried by Inſpection; *Quære* 18 *Ed.* 3. 55. it lies till the full Age of the Heir, except the Cuſtom enables the Infant at Fifteen, and therefore they were at Iſſue on the Age. 29 *Ed.* 3. 5. See 18 *Ed.* 2. *Account* 120. See a Feme Guardian in Socage took Huſband, Account lies againſt the Baron Sole, for the Profit taken after the Coverture, but for thoſe before, againſt both. 8 *Ed.* 2. *Brief* 847. See 2 *H.* 4 12. *a. per Hankf.* a Man diſtrains, *&c.* in his own Name, and after makes Conuſance as Bailiff, he ſhall not have Aid of the Lord. 7 *H.* 4. 34. If one receives Rent from my Tenants without my Aſſent, Account lies, *& n' unque* Receiver ſhall not aid him. 4 *H.* 7. *Brief* 65.

(*b*) *Note*; If the Defendant pleads in Bar, and it is found againſt him, he ſhall be awarded to the *Fleet*, *inſtanter*, 39 *Ed.* 3 35. but if the Plaintiff there leaves him without accounting, he may have a *Scire facias* againſt the Plaintiff; and if the Plaintiff does not come at the Day, the Defendant ſhall be diſmiſſed, and thereby the Plaintiff has loſt the Advantage of the Judgment; and *per Anſham*, of the Writ alſo. 18 *Ed.* 2. *Account* 123. See 1 *H.* 7. 1. But if he will not account, the Plaintiff may pray Judgment according to the Account. 14 *Ed.* 3. *Account* 109.

D A Man may have a Writ of Account againſt a Woman as *Receptrix denariorum*, or againſt a Chaplain, but not againſt an Infant (*a*) 19 *H.* 6. 5. 3 *Ed.* 4. 40. 15 *Ed.* 4. 16. *contra.*

14 H. 6. 4. 16 Ed. 3. Account 52.

E A Man may have an Account againſt one as Bailiff of a Court or Hundred (*b*). 13 *H.* 4. 8. 1 *H.* 5. 2. *contra.*

F (*c*) And a Man ſhall have an Account againſt a Prior upon a Receipt had by his Commoign, but there the Writ doth ſuppoſe that he himſelf did receive the Money, *&c.* and ſhall not ſay, by the Hands of his Commoign. And ſo a Receipt made by the Huſband, by the Hands of his Wife, is his own Receipt, and the Writ and the Count ſhall ſuppoſe that he himſelf did receive, *&c.* without ſaying by the Hands of the Wife; but it is otherwiſe if a Prior or Huſband receive Money of a Stranger, then the Count ſhall be that he received by the Hands of a Stranger, *&c.* But the Writ ſhall be general, *Tempore quo fuit receptor denar'* without ſaying by whoſe Hands, but he ſhall ſhew that in the Count or Declaration.

2 H. 5. 2. 47 Ed. 3. 16. 4 Ed. 3. ac. 44 Ed. 1. but 5 Ed. 3. 21. Account 100. contra.

G And if a Man deliver Goods or Money beyond Sea to deliver to him again in *England* at a certain Place, he ſhall have an Account for thoſe Goods, *&c.*

41 Ed. 3. 9, 12.

And if a Man deliver Money to one upon Condition, that if he do ſuch a Thing, he ſhall have the Money, if not, then he who delivered it ſhall have it again; if he perform not the Condition, he ſhall have an Account againſt him for the ſame.

41 Ed. 3. 10. 12 H. 4. 18. ac. 11 H. 4. 75. Skreen. 21 Ed. 3. Account 66.

H (*d*) If two have Goods in Jointure, or in Common, and one of them deliver the Goods to one to render Account, he alone ſhall have an Action for them (*e*).

I If two have a Ward, and one take all the Profits, the other ſhall have an Account againſt him (*f*). *P.* 45 *Ed.* 3.

43 Ed. 2. 21. 45 Ed. 3. 20.

(*a*) In Account, it is a good Plea to ſay he was under Age at the Time of the Reſceit. 21 *Ed.* 3. 7. See the Form of the Writ againſt Baron and Feme, on a Reſceit by the Feme. *Dyer* 202.

(*b*) Or of a Nief. 2 *H.* 5. 2. 47 *Ed.* 3. 16.

(*c*) The Count ſhall not abate, but when it ſuppoſes a Reſceit by the Hands of the Commonk, or Feme of the Plaintiff, or Defendant; but it ſhall not ouſt the Defendant of his Law. But it ſeems the Count is good, ſuppoſing the Reſceit immediate in ſuch Caſe. 13 *H.* 4. 8. 2 *H.* 5. 2. 10 *Ed.* 4. 6. 15 *Ed.* 4. 16. See 4 *Ed.* 3. *pl.* 45. 5 *Ed.* 3. *pl* 6. *contra.*

(*d*) See *contra* 13 *Ed.* 2. *Account* 158. 15 *Ed.* 2. *Account* 119. 31 *Ed.* 1. *Account* 126. where one Jointenant alone was Bailiff.

(*e*) 12 *H.* 4. 18. *per Trem.*

(*f*) *Viz.* Where he was his Bailiff. 21 *Ed.* 3. 60. *Account* 66. 14 *Ed.* 3. *Account* 70. 30 *Ed.* 1. *Account* 127. 31 *Ed.* 1. *Account* 126. And ſee there a Summons and Severance in Account. See 17 *Ed.* 2. *Account* 122. 47 *Ed.* 3. 22. 49 *Ed.* 3. 28.

Note; In Account by *C.* againſt *B.* as Receiver by the Hands of *D.* the Defendant pleads that *A.* made the Plaintiff and Defendant his Executors, and that *D.* was indebted to *A.* in ſuch a Sum, and that the Defendant received it. *Reſolved*, 1. That Account does not lie by one Executor againſt the other, for the Poſſeſſion of the one is the Poſſeſſion of the other. 2. That it is no Plea here, if he does not ſay that he received the Money to render an Account, *&c.* for one Piece of Money cannot be known from another; but it is otherwiſe in Treſpaſs or Detinue of Chattels which may be known. 11 *H.* 4. 79. 13 *H.* 4. 1.

(*a*) If

[119.] 10 H. 6. 11. (*a*) If the Huſband hath received the Profits of the Wife's Lands, and die, the Wife ſhall not have a Writ of Account of the Profits nor of the Rents, during the Coverture, againſt the Huſband's Executors. A

4 Ed. 3. 17. Fitz. Account 97. (*b*) If a Receiver or Bailiff make a Deputy, yet the Action of Account ſhall be brought againſt the Receiver or Bailiff themſelves, and not againſt their Deputies; for the Deputies receive the ſame to their Maſters Uſes. B

11 R. 2. Account 48. 4 Ed. 3. Account 34. He who is Surveyor or Controller of Lands, ſhall not be charged in Account (*c*). C

12 Ed. 3. ibid. 75. & 13 Ed. 3. ibid. 76.

6 Ed. 3. 3. Account 102. 8 Ed. 3. Account 94. An Apprentice ſhall not be charged to Account by a Writ of Account; but the Maſter ſhall have a Writ of Account againſt a Servant who is ſent to receive Money, &c. if he be Receiver (*d*). D

V. Account as Receiver, the Defendant ſaid that he was his Apprentice, and no Plea, but he was forced to anſwer to the Receipt.

(*e*) The Pariſh Prieſt ſhall not be charged for the Offerings offered by a Writ of Account, if it be not otherwiſe agreed betwixt them, &c. for the Clerk holds the Veſſel in which they are put. 6 *Ed.* 6. *pl.* 7. E

If the King grant unto a Town the Toll of the Things ſold in the ſame Town, for the Walling of the Town, and other neceſſary Things in the Town, and there be Collectors to receive the ſame, if the Collectors will not render Account thereof, they may have a Commiſſion out of the Chancery to inquire of the Receipt of the Toll-Money, and the Receivers, and to hear and determine the ſame, and to hear their Accounts, and a Writ of Attendance unto the Sheriff, to return a Jury before the Commiſſioners. F

Writ of Debt.

C. 5. pa. 79. 10 H. 6. 7. Debt per Amercement in Leet. 22 H. 6. 56. A Writ of Debt properly lieth where a Man oweth another a certain Sum of Money by Obligation, or by Bargain for a Thing ſold, or by Contract, or upon a Loan made by the Creditor to the Debtor, and the Debtor will not pay the Debt at the Day appointed that he ought to pay it, then G

13 H. 7. 3. in Debt againſt Succeſſor upon Account to his Predeceſſor, which comes to the Uſe of the Houſe, the Writ ſhall be in the Debet.

(*a*) See 11 *R.* 2. *Account* 49. For Rent iſſuing out of a Freehold, by one during the Coverture, the Feme ſhall have Account, and not the Huſband's Executors; *contra* of other Reſceits.

(*b*) And the immediate Bailiff ſhall have Account againſt his Deputy. *Note*; He ſurmiſed that he had accounted. See 4 *Ed.* 3. 17. & 8. 11 *R.* 2. *Account* —.

(*c*) See 41 *Ed.* 3. *Account* 34. 11 *Ed.* 3. *ib.* 75. 13. *Ed.* 3. *ibid.* 76. 12 *Ed.* 3. 13 *Ed.* 3.

(*d*) If they are not in a Bag ſealed. 29 *Ed.* 3. 20. 8 *Ed.* 3. 261.

(*e*) 25 *Ed.* 3. 46. But if he was his Procurator of the Church, to receive to his Uſe the Offerings, &c. Account lies from the Time that he was *Ballivus Eccl'.* 30 *Ed.* 3. 1. 25 *Ed.* 3. 46.

(*a*) the Creditor ſhall have an Action of Debt againſt him for the ſame; and it may be ſued in the County before the Sheriff by *Juſticies*, as well as in the Common Pleas; and the Form of the Writ is ſometimes in the *Debet* and *Detinet*, and ſometimes in the *Detinet* only, and not in the *Debet*, and if it be (*b*) in the *Debet* it ſhall abate. It ſhall be always in the *Debet* and *Detinet*, when he who makes the Bargain or Contract, or lends the Money, or he to whom the Bond is made, bringeth the Action againſt him who is H bounden, or Party to the Contract (*c*) or Bargain, or unto the Lending of the Money; and Money delivered by the Writ. But if a Man ſell twenty Quarters of Wheat, or a Horſe; if he bring Debt for the Horſe, the Writ ſhall be in the *Detinet* only, and the Form of the Writ ſued in the County before the Sheriff for Money, is ſuch:

In Debt againſt Huſband and Wife for a Debt before Coverture the Writ ſhall be Debet and Detinet; ſo in Debt againſt or for the Succeſſors in Reſpect of Obligation made to the Predeceſſor. 47 Ed. 3. 25. 40 Ed. 3. 16. 9 Ed. 4. 41. 47 Ed. 3. 23. If the Heir be to bring Debt, it ſhall be in the Detinet.

(*d*) *The King to the Sheriff of* Surry, *greeting: We command you, that you Juſtice* A. *that juſtly and without Delay he render to* B. *twenty Shillings which he oweth to him as it is ſaid, as he can reaſonably ſhew that he ought to render it to him, that we may hear no more Clamour for want of Juſtice*, &c. *Witneſs*, &c.

I And if the Writ of Debt be for other Goods or Chattels than Money, then the Writ of Debt ſhall be ſuch: Ant. 70.

The King to the Sheriff, &c. *We command you, that you Juſtice* A. &c. *that he render to* B. *a certain Book, or a certain Cup, or a certain Horſe, or two Lambs of the Price of*, &c. *which he unjuſtly detains from him*, &c.

K And if a Writ of Debt be brought in the County before the Sheriff by *Juſticies*, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without ſhewing Cauſe in the Writ: But the Defendant ſhall not remove the

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(*a*) See Debt and Detinue of Things brought againſt Executors by ſeveral *Præcipes* in one Writ. 11 *H.* 6. 48. 12 *H.* 6. 1.

(*b*) *Note*; If Leſſee for Years rendring Rent makes his Executors and dies, Debt lies againſt them in the *Detinet*, 10 *H.* 7. 5. or it may be in the *Debet* and *Detinet*, 11 *H.* 6. 16. but by *Hargraves*'s Caſe, it ſhall be in the *Debet* only. 5 *Co.* It is good either way for the Occupation, 14 *H.* 4. 29. but if Leſſee for Years of a Rent dies, for Rent incurred after his Death; it lies in the *Detinet.* 11 *H.* 6. 36.

See 14 *H.* 4. 28. It is ſaid by *Fort.* that an Executor may waive a Leaſe for Years made to the Teſtator, rendring Rent. See 11 *H.* 6. 36. It is ſaid, if a Termor makes his Executors, and dies, and one of the Executors occupies the Term, that Debt lies againſt him alone in the *Debet* and *Detinet*. *Vide Poſt.* M.

See 19 *H.* 8. 8. 10 *H.* 7. 5. 22 *Ed.* 4. 21. 41 *Ed.* 3. *Brief* 54. 47 *Ed.* 3. 27.

That a Writ of Debt lies for a Fine to the King, *vide ant.* 96.

Though *W.* 2. *cap.* 11. gives an Action againſt the Gaoler that lets out of Priſon one committed to him for Arrearages of Account, yet if one be committed to him upon Condemnation in Debt, and he lets him go at large, he ſhall have an Action of Debt againſt him, though the Statute be penal. *Plowd.* 178. *a.*

(*c*) See 50 *Ed.* 3. 16. 11 *H.* 7. 6. *Vide infra* M. 19 *H.* 8. 10 *H.* 7. 8. 22 *Ed.* 4. 21.

(*d*) *Note*; On a *Juſticies*, the Sheriff cannot award a *Capias* or a *Ca. Sa.* as it ſeems, nor if the Suit be removed by *Pone* into *C. B.* and the Sheriff return *Nil habet*, the Court cannot grant a *Capias*; but it is otherwiſe on a Replevin removed, *ut ſupra.* 3 *H.* 6. 54. *Stat.* 25 *Ed.* 3. *cap.* 17.

Plea out of the County without ſhewing Cauſe in the *Pone*, and yet in the End of the Writ it ſhall be ſaid, *Let Execution of this Writ be done, if the Cauſe be true, otherwiſe not.* And the Cauſes wherefore the Defendant may remove the Plea, are many, as appeareth in the Regiſter. One, if the Defendant plead a foreign Plea, which cannot be tried in the County, *&c.* Or if the Defendant ſhew that he, before whom the Plea is depending, doth maintain the Plaintiff, or favour him, *&c.*

And if the Plea of Debt be ſued within any Liberty, or Court of any Borough or City, *&c.* the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without ſhewing any Cauſe in the Writ. But if the Defendant ſue to remove the Plea by a *Recordare* into the Common Pleas, out of any Town or City, he ought to ſhew Cauſe in the Writ, as before is ſaid. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment, and award Execution, *&c.* then the Defendant, or he againſt whom the Judgment is given and Execution awarded, ſhall have an Attachment againſt the Bailiffs, or thoſe who ſo proceeded to Judgment, *&c.* to anſwer as well the King for the Contempt, as the Party his Damages, *&c.* And the Form of the Writ of Debt in the Common Pleas is,

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one* L *hundred Shillings, which he owes to him, and unjuſtly detains, as it is ſaid*; *and unleſs he will do it, and the aforeſaid* B. *ſhall make you ſecure*, &c. *then ſummon by good Summoners the aforeſaid* A. *&c.*

29 H. 8. 8. Vide ſupra, H. &c. ib.

(*a*) And the Rule in the Regiſter is, *That in a Writ of Debt of Chattels, it* M *is never ſaid*, "That he oweth to him." And if the Debt be brought by Executors for a Duty due to their Teſtator, the Writ ſhall be, *Which he detains from them*, and not *Owes to and detains*, becauſe they were not Parties to the Contract. And ſo if Debt be brought by the Creditor againſt Executors for the Debt of the Teſtator, the Writ ſhall be, *Which they detain from him*, and not *Owe and detain*, although by the Writ he demand Money, *viz.* twenty Pounds, or other Sum of Money.

[120.] If a Man make *B.* and a Monk his Executors, and is indebted unto ano- A ther, the Action of Debt ſhall be brought againſt *B.* and the Abbot and the Monk; and the Form of the Writ ſhall be ſuch:

(*a*) *Note*; The Judgment is for the Chattels or the Value, and ſo Conditional. See 50 *Ed.* 3. 16. 9 *Ed.* 4. 49. *Raſt. Entr.* 174. *Co. Lit.* 90.

If Judgment be given either for or againſt Executors in Debt for a Duty due by the Teſtator, the Writ brought on ſuch Judgment ſhall be only *Detinet.* 11 *H.* 6. 56. adjudged. 10 *H.* 7. 5. 11 *H.* 6. 36. So if the Executors aſſign Auditors to the Teſtator's Accountant, Debt on the Account ſhall be in the *Detinet* only. 10 *H.* 7. 61. 11 *H.* 6. 17. 20 *H.* 6. 4. See 2 *H.* 4. 13. *Note* the Reaſon of thoſe Caſes, where the Foundation of the Action appears of Neceſſity to commence in the Teſtator, the Writ ſhall be in the *Detinet*; *ut ſupra*: So if they (the Executors) bring Debt on a Judgment given in Treſpaſs brought by them of Goods taken out of the Poſſeſſion of their Teſtator; *contra* if it was *De bonis Teſtatoris extra cuſtodiam ſua'*; per Park.

But if they take an Obligation for a Contract made to the Teſtator, or if they ſell Goods of the Teſtator, it ſhall be *Debet* and *Detinet*, becauſe the Commencement of the Action was in the Executors. 20 *H.* 6. 415. *b.* That it ſhall be in the *Detinet* adjudged. See 17 *Ed.* 3. *Brief* 87.

Command B. *Executor of the Teſtament of* S. *and the Abbot of* C. *and Friar* A. *of* C. *Concanon of the ſame Abbot of* C. *Coexecutor of the ſaid Teſtament of the aforeſaid* B. &c. *twenty Pounds.* And if they bring an Action the Writ ſhall be: *Command* D. &c. *that he render to* B. *Executor of the Teſtament of* S. *and to the Abbot of* C. *Friar* A. *of* C. *Concanon of the ſame Abbot of* C. *Coexecutor of the ſaid Teſtament of the aforeſaid* B.

Joinder in Action 75. H. 7. 8. Keb. A Leaſe for Years to a ſecular Man and an Abbot; *Quære* how they hold. See 15 Eliz. Plow. 441.

B And if a Man be bound unto *B.* and an Abbot in twenty Pounds, and *B.* dieth, his Executors and the Abbot ſhall join in the Action of Debt, and the Writ ſhall be ſuch: *Lit.* 61.

Command C. &c. *that juſtly*, &c. *he render to* B. *and* M. *Executors of the Teſtament of* R. *and to the Abbot of* C. *ten Pounds*, &c. *which*, &c. *and unleſs*, &c. *and the aforeſaid Executors and Abbot ſhall make you ſecure*, &c.

And if a Writ of Debt be brought againſt the Heir upon an Obligation of his Anceſtors, the Writ ſhall be ſuch: *Command* A *of* S. *Son and Heir of* B. *that he render*, &c. (*a*).

The Heir of the Heir ſhall be charged.

C (*b*) And if there be divers Heirs, then the Writ ſhall be, *Command* A. *of* S. *Brother and one of the Heirs of* B. *and* B. *Couſin and the other Heir of the ſame* B. &c.

D And if a Man be in Debt, and die inteſtate, or the Executors refuſe to be Executors, for which the Goods come to the Hands of the Ordinary, the Creditors ſhall have an Action of Debt againſt the Ordinary by the Statute of *Weſt.* 2. *cap.* 19. and the Writ ſhall be ſuch:

(*c*) *Command* A. *Biſhop of* Lincoln, *to whoſe Hand came the Goods and Chattels which were* B.'*s who died inteſtate, as it is ſaid, that juſtly*, &c. *he render*, &c.

And if the Goods come unto the Hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor ſhall have an Action of Debt againſt the Executors of the Ordinary, and the Writ ſhall be ſuch:

(*a*) See a Petition in Parliament againſt charging the Heir in ſuch a Caſe. *Parl.* 25 *Ed.* 3. No. 35. *Note*; the Words *Fil'* & *hæred'* were omitted, yet held good, 10 *Ed.* 3. 15. yet it is otherwiſe, if the Writ be *Filio* & *hæredi apparenti*, and he counts againſt him as Son and Heir generally. *Paſ.* 35 *Eliz. Rot.* 242. *Newdigate*'s Caſe, 32 *Ed.* 3. *Brief* 289. and it ſhall be in the *Debet.* Ibidem 294.

(*b*) See 11 *H.* 7. 12. 11 *Ed* 3. *Debt* 7. 10 *Ed.* 3. 63. 7 *Eliz.* 277.

(*c*) See 11 *H.* 4. 71. *per Hankf.* without counting that he is Ordinary of the Place. See 17 *Ed.* 2. *Brief* 822. that it does not lie at Common Law. *Dyer* 297. *Vide contr.* and *Note*; where it is againſt the Biſhop only for the Goods which he adminiſtred within his Dioceſe, adjudged otherwiſe, and *Note*; if the Ordinary adminiſters 100 *l.* and afterwards commits Adminiſtration, he is yet liable. 12 *R.* 2. *Adminiſtration* 21.

See 17 *Ed.* 2. *Brief* 822. the Writ was brought againſt the Dean himſelf as Guardian, &c. and they were at Iſſue thereon. See 11 *Ed.* 3. *Executor* 77. where a Writ was brought againſt the Executors of a Dean. *Ald.* doubted. For by him here the Executors are to be charged, for that the Goods of the Inteſtate came to the Hands of the Ordinary, and yet it ſeems they are not chargeable as Executors of the Ordinary, no more than the Executors of an Adminiſtrator. See *Brudenell*'s Caſe, 5 *Co.* 9.

Note; The Stat. of *Weſt.* 2. *cap.* 21. 31 *Ed.* 3. 11. Adminiſtrators and the Ordinary charged in the ſame Manner, *viz.* as Executors. See 24 *Ed.* 3. 54. *Rot. Parl.* 9 *Ed.* 2. *M.* 5. *Dyer* 271.

Command A. *of* B. *and* C. *of* T. *Executors of the Teſtament of Maſter* R. *of* P. *late Dean of the Church of bleſſed* Peter *of* York, *and Guardian of the ſpiritualty of the Archbiſhoprick of* York, *the See being vacant, to whoſe Hands came the Goods and Chattels which were* E.'*s of* B. *who died inteſtate, as it is ſaid, that juſtly*, &c. *he render*, &c. (*a*)

And it appeareth by the Regiſter, that in *Anno* 16 *Ed.* 3. the Plaintiff was (*b*) anſwered unto ſuch Writ which he brought againſt the Executors of the Ordinary.

14 H. 4. 30. So againſt Guardian of the Spiritualties.

And there is a Writ of Debt in the Regiſter for the Ordinary, againſt him who was indebted to him who died inteſtate. But the Opinion of the Sages of the Law at this Day is, that the (*c*) Ordinary ſhall not have an Action of Debt againſt thoſe who were indebted to the Inteſtate, becauſe the Action is given to the Adminiſtrator, and the Ordinary may commit Adminiſtration of the Goods (*d*) when he pleaſeth. But before the Statute of 31 *Ed.* 3. *cap.* 11. the Adminiſtrators could not have an Action of Debt againſt the Debtors, wherefore it was then thought Reaſon, that ſome Perſon ſhould have the Action for thoſe Debts, *&c.* But the Ordinary at this Day may have an Action of Treſ-

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(*a*) *Quod juſte, &c. Note*; this Clauſe is where the Executors refuſe. *Reg.* 141. *Dyer* 236. 6 *Eliz.* 280. *a.* 11 *Ed* 3. *Bro. Executors* 161. *Fitz.* 77. 17 *Ed.* 2. *Brief* 822.

(*b*) *Note*; This Writ here is miſtaken, for the Writ which he ſpeaks of is brought againſt the Deacon himſelf, 16 *Ed.* 2. and not againſt his Executors. 16 *Ed.* 3. See 11 *Ed.* 3. *Executors* 77.

(*c*) See 7 *H.* 4. 18. 18 *H.* 6. 23. accordant. And therefore, if *A.* be indebted to *B.* and *B.* to *C.* and *B.* dies Inteſtate, *C.* cannot attach the Debt of *B.* in the Hands of the Ordinary by the Cuſtom of *London*. *Dyer* 247. *Quære Kelw.* 127. if he can releaſe the Debt. See 16 *Ed. Executors* 77. *per Fr.*

(*d*) Even by *Parol*; *Quære* 9 *H.* 5. 5. he may repeal it, and therefore the Committing the Adminiſtration transfers the Power from the Ordinary to the Adminiſtrator, and therefore the Adminiſtrator ſhall have Treſpaſs for a Treſpaſs done to the Goods, or Debt for Rent Arrear, before the Adminiſtration committed, and after the Death of the Teſtator, for the Law adjudges him Adminiſtrator *ab initio.* 18 *H.* 6. 23.

Note; No Account lay for an Adminiſtrator at Common Law. 19 *Ed.* 3. *Adminiſtrator* 20. Alſo at Common Law, before the Stat. 31 *Ed.* 3. *cap.* 11. the Ordinary might commit Adminiſtration, and therefore he ſhall be diſcharged for doing it, *Plo.* 280. and Debt was maintainable againſt them, but not by the Name of Adminiſtrators, but as Executors, 38 *Ed.* 3. 21. and the Action is given againſt them as Adminiſtrators, by the Statute 31 *Ed.* 3. *&c.* and ſo agreed *per omnes.* 11 *H.* 4. 73. and *Lib. Intr.*— And therefore the Action againſt them is founded on the Statute as well as the Action for them, and therefore he that adminiſters *de ſon Tort*, ſhall not be called Adminiſtrator, but Executor. 35 *H.* 6. 31. *per Moile.*

The Form of the Count is, *cui Adminiſtratio, &c. per* I. S. *Official' loci illius ordinar. apud* S. *poſt Mort' prædict'* G. *commiſſa fuit*; ſo that it is neceſſary for the Plaintiff to ſhew that the Defendant was made Adminiſtrator by the Ordinary in his Count, elſe it is not good. 44 *Ed.* 3. 16. *per Cur.* 11 *H.* 4. 73. *per Thorn. Hill* and *Culp. contra Hankſ.* See *contra* 9 *H.* 5. 7. for it is there ſaid, that it ſhall be intended to be committed by the Ordinary; and for that it may be ſo intended, you need not count on a Commiſſion by the Ordinary in an Action againſt them, 35 *H.* 6. 46. (See *T. Jon.*) alſo the Ordinary's Right might thereby be drawn in Queſtion, 37 *H.* 6. 27. and therefore in this Caſe it is no Plea to ſay *N'unque Adminiſtrator, ne unque Adminiſtrator come Adminiſtrator*; but only that Adminiſtration was not committed to him, 35 *H.* 6. 38. 9 *H.* 5 7. 11 *H.* 4. 73. *per Hill*, and if the Defendant pleads that Adminiſtration was committed to him, and *I. S.* not named, to which he agreed, the other ſhall not ſay that *I. S.* never adminiſtered, without traverſing the Commiſſion of the Adminiſtration, or the Agreement; but it is otherwiſe, if ſuch Agreement be not ſurmiſed; for there *per Cur*, it is a good Iſſue that *I. S.* never adminiſtred. 8 *H.* 6. 2. 9 *H.* 6. 6. 20 *H.* 6. 1.

paſs for taking of the Goods out of his own Poſſeſſion, but not for taking them out of his Poſſeſſion who died inteſtate, as Adminiſtrators may have.

E If a Man be retained in *England* to do Service beyond Sea, receiving ten Pounds *per Annum*, he ſhall have an Action of Debt in *England* where the Retainer was.

F If a Man marries a Woman who is in Debt to divers Perſons, the Huſband and Wife ſhall be ſued for the Debts, living the Wife: But if the Wife die, the Huſband ſhall not be charged for the Debt after the Death of the Wife, if the Creditor of the Huſband and Wife do not recover the Debt during the Coverture, which was due by the Wife before the Coverture: For then, altho' the Wife dieth, yet the Huſband ſhall be charged for that Debt by that Recovery after the Death of the Wife. 48 Ed. 3. 1. 49 Ed. 3. 25. 20 H. 6. 11, 22. 8 Ed. 4. 11. F. Dett 168.

G (*a*) A Man ſhall be charged in Debt for the Contract of his Bailiff or Servant, where he giveth Authority unto his Bailiff or Servant to buy and ſell for him: And ſo for the Contract of the Wife, if he give ſuch Authority to his Wife, otherwiſe not. 2 R. 3. Fitz. Dett 3.

H If a Man leaſe Lands for Years rendring Rent (*b*), and for Default of Payment, that he ſhall re-enter; if he do re-enter in the Land for not Payment of the Rent, yet he may have an Action of Debt for the Rent, for which he doth re-enter, and in the Writ ſhall recover the Rent, for which he re-entred. 17 Ed. 3. 48. 18 Ed. 3. Debt 6. 36 Ed. 3. 7. Debt 10.

I (*c*) If a Man bind him and his Heirs unto another in twenty Pounds and dieth, the Heir ſhall be charged to pay the ſame, if he have Lands by Deſcent in Fee-ſimple from his Anceſtors, otherwiſe not. But if a Man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir ſhall not have an Action of Debt upon the Obligation, but his Executors. *Poſt.* 122. G. 14 Ed. 3. Debt 135.

A Man was bound to one and his Heirs, and holden the Heir ſhould not have Debt living the Executors. 9 H. 6. 58. The Heir ſhall not have Detinue for a Deed bailed by his Father. 19 H. 6. 4. 48 Ed. 3. 12. It is ſaid, that if the Ordinary do not commit Adminiſtration, the Heir ſhall have Debt.

(*a*) If

(*a*) But if the Bailiff in that Caſe makes a Contract without any ſpecial Authority, and it comes to his own Uſe, *Quære*, 2 *H.* 3. *Debt* 8. 34 *Ed.* 1. *Debt* 6. 163. 13 *H.* 4. *Debt* 179. 21 *H.* 7. 4. See a Diverſity between an Agreement for Goods and the coming of them to the Uſe of the Maſter. See 27 *H.* 8. 25.

(*b*) So if he makes a Leaſe for Life rendring Rent, and ſurrenders, &c. 17 *Ed* 3. 48, 73. 18 *Ed.* 3. 10. 30 *Ed* 3. 7. 38 *Ed.* 3. 10. *contr.* by ſome, 19 *H.* 6. 42. for the Re entry is not a Penalty, ſo of a *Nomine pœnæ*. See 38 *Ed.* 3. 22. 18 *Ed.* 3. 9. 19 *H.* 6. 42. 6 *H.* 7. 3.

(*c*) See a ſpecial Judgment againſt the Heir on a *Nil dicit*, *Dyer* 344. when againſt the Executors of the Heir; ſo if the eldeſt Son enters after the Death of the Father, and dies, Debt lies againſt the younger Son, as Heir to the Father. *Dyer* 368. *Note*; *A.* ſeiſed of one Acre at Common Law, and three Acres in Gavelkind, obliges himſelf and his Heirs by Bond to *B.* and dies, having three Sons *C.* *D.* and *E.* *E* aliens his Purparty, *B.* brings Debt againſt *C.* and *D.* and pending the Writ, *E.* repurchaſes. 1. If the Elder had not Aſſets at Common Law, it ſeems of Neceſſity, that the Writ ought to be againſt all of them, 11 *H.* 7. 12. 38 *H.* 6. 22. and ſo of a Vouchee, for they are *in eodem gradu*. 2. If the Elder took by Diſcent at Common Law, it ſeems that he ſhall be charged Sole; *Quære*, for thereby his Purparty in Gavelkind ſhould be alſo liable, and therefore adjudged, 11 *Ed.* 3. *Dett* 27. *contr.* but where he has Aſſets at Common Law, ſee 38 *Ed.* 3. 22.

3. It

19 H. 4. Debt 166. 45 Ed. 3. 24. ac. if it be by Deed.

K (*a*) If a Man promiſe to one twenty Pounds to marry his Daughter, and he marrieth her, he ſhall have an Action of Debt againſt him upon that Promiſe. *H.* 31 *Ed.* 3.

15 Ed. 4. 32. cont. per Cur. 37 H. 6. 8. ac. 21 H. 7. 5.

L (*b*) If a Parſon have an Annuity in Fee in the Right of his Church, and the Annuity is behind, and the Parſon dieth, his Executors ſhall have Debt for the Arrearages of the Annuity in the Life of the Teſtator.

7 H. 6. 19. 11 H. 5. 95. Thirning and Skreen, that he may diſtrain for the Penalty, quod non eſt lex.

M If a Man grant to one a Rent in Fee, and further grant, that if the Rent be behind, *&c.* that he ſhall forfeit for a Penalty forty Shillings to the Grantee and his Heirs, if the Rent be arrear, the Grantee ſhall have Debt for the Penalty. *And ſo the Heir ſhall have the Penalty, and ſhall have Debt for the ſame, becauſe it is an Inheritance, and perhaps may continue, *&c.*

[121.]

A If a Man be condemned in Debt or Damages, and be committed unto Priſon for the ſame; if the Gaoler ſuffer him to go at Liberty, or he eſcape

But note, that if a Man be in Priſon by a Capias ad Computand. and after eſcape, no Debt, but Action upon the Caſe, becauſe he is not in Priſon for any Duty, by Choke and Pigot. 15 Ed. 4. 19. 16 Ed. 4. 2 and 3

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3. It ſeems there may be one Action againſt them, and ſeveral Counts, *viz.* againſt *E.* as Heir general, and againſt *C.* and *D.* as Heirs by Gavelkind, for if he does not count ſeverally, he ſhall not have Execution but of the Lands in Gavelkind. *Quære* 11 *Ed.* 3. *Dett* 7. and ſo in Caſe of Voucher. 4 *Ed.* 3. 55. *per Will.* 4. The Writ ought to be againſt *C. D.* and *E.* though *E.* has nothing, but if *C.* had Aſſets at Common Law, and *D.* and *E.* nothing, it ſhould be brought againſt *C.* alone, but if the Writ had been againſt all, ſeeing *E.* had nothing, the whole ſhould be levied on the others. 11 *Ed.* 3. 7. 6 *Ed.* 3. 50. 5. Although the Heir aliens, and repurchaſes before, or pending the Writ, he is yet liable. 26 *H.* 8. 1. 27 *Ed.* 3. 82. 10 *Ed.* 3. 15. adjudged. See 19 *H.* 6. 46. 48 *Ed.* 3. 32. 40 *Ed.* 3. 10. 6. If the Writ were brought againſt the elder Son only, and pending that the Land in Gavelkind had deſcended to him and the other, the Writ ſhould abate; *per Shard.* 11 *Ed.* 3. *Debt* 7. See 11 *H.* 7. 12. If *A.* ſeiſed of Lands on the Part of his Father, bind himſelf, and dies without Iſſue, ſeveral Actions may be brought againſt the ſeveral Heirs, but only one Execution. *Quære*, and *Note*, It ſeems that by the Re-purchaſe, he ſhall abate the Writ againſt the Elder only. *Dyer* 230. and 204. Debt was againſt three Heirs in Gavelkind; they were outlawed, and two purchaſe a Charter of Pardon, they ſhall not plead Nonage of the third, becauſe he is out of Court, but muſt anſwer alone. *Dyer* 224. See where the Heir ſhall have Debt on an Obligation to his Anceſtor. 49 *Aſſ.* 4. See Debt by the Heir on an Obligation made to his Father and his Heirs, the Defendant pleads a Releaſe by the Father's Executors, but was forced to anſwer to the Deed of his Father. 14 *Ed.* 3. (See 19 *H.* 6 41. a Difference between *Debt* and *Detinue* by the Heir.) See 14 *Ed.* 3. *Dett* 135, 139, 140.

(*a*) If a Promiſe be to pay one forty Pounds for Service done, Debt lies, and he ſhall count *unde devenit obligat.* in ſuch a Sum. 29 *Ed.* 3. 25. So if one promiſe to another twenty Pounds if he will marry his Daughter, Debt lies without any Specialty. 31 *Ed.* 3. *Dett* 8. 34 *Ed.* 1. *Debt* 159. 1 *R.* 2. *Debt* 166. See 45 *Ed.* 3. 24. 29 *Ed.* 3. 33. *Ant.* 44. O, but 14 *Ed.* 4. 6. *contra.*

(*b*) Debt by the Executors of a Parſon for Arrears of an Annuity, which his Predeceſſor had by Preſcription, 12 *H.* 6. 8. ſo a Succeſſor ſhall be charged with the Arrears of an Annuity incurred in the Life of his Predeceſſor, 21 *H.* 7. 5. yet the Succeſſor of St. *Croſs* could not recover Damages for Arrears of Annuity in Time of his Predeceſſor, but only for Arrears in his own Time; nor could a Parſon who was Preſentative, and not Elective. 20 *Aſſ.* 4.

out of Priſon, (*a*) the Gaoler ſhall be chargeable in Debt to him at whoſe Suit he was impriſoned, and his Executors (*b*).

B If a Man lend another Man a Horſe until a certain Day, and then he to 50 Ed. 3. 16.
redeliver the Horſe or ten Pounds at the ſame Day, after the Day if the Horſe
be not delivered, it is in his Election to bring an Action of Debt for the
Horſe in the *Detinet*, or an Action of Debt for the ten Pounds in the *Debet* (*c*).

C (*d*) If a Man make a Leaſe for Life unto a Woman, rendring Rent, if ſhe 26 Ed. 3. 64.
marry, and after the Rent is behind, and the Wife dieth, the Huſband ſhall Debt 180.
be charged in an Action of Debt for the Rent behind, becauſe he took the 10 H. 6. 11.
Profits of the Lands by Reaſon of his Wife; otherwiſe it is of an Obligation 9 H. 6. 29.
made by his Wife before Marriage, then the Huſband ſhall not be charged if 20 H. 6. 45. Aſcough.
a Recovery be not againſt him and his Wife in the Life of the Wife (*e*). 49 Ed. 3. 25.

If a Woman be endowed of a Rent, and afterwards taketh Huſband, and V. 14 H. 6. 26.
the Rent is arrear, and the Wife dieth, the Huſband ſhall have an Action of 10 H. 6. 11.
Debt for the Rent, becauſe it was a Duty in him during the Marriage. But 4 Co. 89.
if a Man be bounden unto a Woman, and ſhe taketh Huſband, and the Day
of Payment cometh during Marriage, and after the Wife dieth, the Huſband

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(*a*) *Note*; Tho' the Gaoler retakes him, if it be after the Writ, it is no Excuſe. 31 *Ed.* 1. *Debt* 162. *Note*; on the Eſcape, againſt the Sheriff it is a new Debt; and therefore, if the Mayor of the Staple ſuffers one to go at large, who is in Priſon for Debt for Merchandiſe, and a new Mayor is, Debt lies againſt him, not on the Statute-Staple, but at Common Law: So by *Paſton*, a Releaſe made to him who eſcapes is no Plea in Debt againſt the Sheriff. 9 *H* 6. 19. Debt on Eſcape does not lie againſt an Heir or Executor of a Gaoler. *Dyer* 271, 322. 41 *Aſſ.* 15. In Debt by the Conuſee of a Statute Staple, *Note* 13 *Ed* 3. *Barr.* 253. Debt lies by the Abbot of *W.* for ſuffering *A.* to go at large, who was delivered to the Gaoler by Auditors for Arrears of Account; and it is agreed, 1. That if *A.* eſcapes, and after ſues an *Ex parte talis*, yet pending that, Debt lies againſt the Gaoler. 2. If the Defendant let him go at large by the Command of the Abbot, though it be without Deed, yet he is diſcharged; for the Abbot was ſovereign Gaoler, and the other but his Deputy; *aliter*, if it had not been ſo. See 10 *H.* 7. 3. 27 *H.* 8. 24. *Cawdry*'s Caſe. If three are impriſoned, and one only eſcape, Debt lies againſt the Sheriff, if it be on a joint Condemnation. 20 *H* 7. *Kelw.* 68.

(*b*) See 7 *H.* 6. 5. and Debt againſt a Sheriff, 11 *Ed.* 2. *Debt* 172. 13 *H.* 7. 2. 34 *Ed.* 1. *Debt* 162. *Stat.* 1 *R.* 2. and *Weſtm.* 2. and *infra* P.

(*c*) See 13 *Ed.* 4. 4. 9 *Ed.* 4. 37, 49. 26 *Ed.* 3. 71.

(*d*) *Note* Sir *W. Levings*'s Caſe, 26 *Ed.* 3. 64. *A.* grants a Rent to *B.* for Life out of the Manor of *C.* and afterwards enfeoffs *D.* of the Manor who takes *G.* to Huſband, and then *B.* dies, and his Executors bring Debt againſt *G.* and adjudged, 1. That for all Arrears incurred after the Coverture, Debt lies againſt the Huſband; or if he were Dead, againſt his Executors; but, 2. For all Arrears incurred before the Coverture, the Action ſhall be brought againſt the Husband and Wife. See 10 *H.* 6. 11, 12, accordant.

(*e*) See 10 *H.* 6. 10. *per Babb.* and *Note* 12 *R.* 2. *Account* 49. *A.* Leſſee for the Life of a Feme Covert rendring Rent, *B.* receives the Rent as Receiver, the Huſband dies, the Wife ſhall have Account againſt *B.* and not againſt the Executors of the Huſband; *aliter* as it ſeemed to *Babb.* &c. if the Reſceit had been of a perſonal Duty.

See 1 *Lev.* 26. 4 *Co.* 89. 10 *H.* 7. 11. 6 *Ed.* 2. *Execution* 109. 10 *H.* 6. 12. 49 *Ed.* 3. 25. 39 *H.* 6. 22.

ſhall not have an Action of Debt upon the Bond, becauſe it was a Duty due unto the Wife and a Thing in Action before the Marriage (*a*).

19 H. 6. 14. Quære, Aſcue pro' Newton con'. (*b*) If a Parſon have an Annuity in Fee, and the ſame is behind, and the D Parſon doth reſign, yet he ſhall have an Action of Debt for the Arrearages before the Reſignation.

And if a Man leaſe a Manor for Life, and the Rent is behind, which the E Tenants who hold of the Manor are to pay, and the Leſſee for Life of the Manor dieth, his Executors ſhall have Debt for the Arrearages of the Rent due by the Tenants of the Manor.

(*c*) And ſo if the Tenant for Life of the Manor, ſurrender his Eſtate to him in the Reverſion of the Manor, yet he ſhall have Debt againſt the Tenants of the Manor for the Arrearages before.

(*d*) If a Man have a Patent from the King to have a certain Sum for F Term of Years, or for Life, out of the Cuſtoms of *London*, and thereupon he have a *Liberate* to the Cuſtomer to pay him, which he delivereth to the Cuſtomer, at which Time the Cuſtomer hath enough in his Hands to pay him; now by the Delivery of the *Liberate*, and the Aſſets in the Hands of the Cuſtomer, the Cuſtomer is Debtor unto him, and he ſhall upon this Matter have Debt againſt him.

37 H. 6. 25. If a Liberate be delivered to Cuſtomers or other Collectors that will ſatisfy, they ſhall be diſcharged againſt all others. 27 H. 6. 9. ac. 21 H. 6. Debt 43.

(*e*) If two ſubmit themſelves to an Award, and the Arbitrators award that G one ſhall pay the other ten Pounds, he ſhall have an Action of Debt upon that Arbitrament.

37 H. 6. 35. (*f*) If an Abbot hath an Annuity in Fee, and the ſame is behind, he ſhall H not have an Action of Debt for the Arrearages, becauſe the Annuity continueth.

(*a*) And yet it is held, the Huſband may releaſe it. 15 *H.* 6. 41.

(*b*) See accordant 19 *H.* 6. 42. and ſo *Note*; the Arrears here do not belong to the Succeſſor, yet ſee 19 *H.* 6. 44. where it is a ſole Corporation Regular, which cannot make an Executor, as an Abbot, Prior, Maſter or Warden of an Hoſpital, *&c.* there the Succeſſor ſhall have the Arrears of an Annuity, and ſo of a Corporation Aggregate. 19 *H.* 6. 42. *per Aſcue.* See 16 *Ed.* 3. 22. 4 *Ed.* 3. 9.

(*c*) See accordant 9 *H.* 7. 16, 17, yet if it be a Leaſe for Years, the Leſſee cannot have Debt during the Term.

(*d*) And ſo if after Delivery of one Tally, another is delivered, it lies for that firſt delivered. 21 *H.* 6. *Debt* 43.

(*e*) *Note*; In Debt on Arbitrament, the Cauſe why ſuch Sum was awarded, ſhall not come in Debate, but in Debt on Account before Auditors, it may be debated, whether there were ſuch Account, or if there were ſuch Reſceit by the Defendant. 20 *H.* 6. 6. And therefore, if the Arrears of a Leaſe for Years, or a Thing be delivered, for which Detinue lies, are put in the Account, the Party ſhall have his Law, if it appears by Examination; for notwithſtanding ſuch Account, he may have Debt for the Rent, or *Detinue* for the Goods, 20 *H.* 6. 16. and therefore in Debt on Arrears of an Account before Auditors, it is a good Plea, *Nul tiel Account*, or *Nil debet modo & forma*, and give in Evidence, there was not any ſuch Account; for if ſo, there cannot be any Arrears. 20 *H.* 6. 24.

(*f*) See 19 *H.* 6. 42. the Caſe of a deſigned Parſon well debated. See 17 *Ed.* 3. 12. 19 *Ed.* 2. *Debt* 176. 10 *H.* 6. 24. 20 and 28 *H.* 6.

I Neither ſhall a Parſon have an Action of Debt for the Arrearages of an Annuity, which he hath in Fee during the Time that he is Parſon: But if he reſign, he ſhall, or if he dieth, his Executors ſhall have an Action of Debt for the ſame. And if a Man who is (*a*) Bailiff do account (*b*) before Auditors, and it is found that he hath expended more than he hath received, for the Surpluſage he ſhall have an Action of Debt againſt the Lord whoſe Bailiff he was. But if a Receiver account, and is found in Surpluſage, many ſay that he ſhall not have an Action of Debt for the ſame, becauſe he is bounden to lay out any Parcel thereof: But it ſeemeth if he do it by Command of the Lord, that then it is Reaſon that he have an Action of Debt againſt the Lord for the Surpluſage.

38 H. 6 5. 7 H. 4 3.

K (*c*) An Abbot ſhall be charged in an Action of Debt upon a Loan of Money made unto his Predeceſſor, if the Money came to the Uſe of the Houſe.

41 Ed. 3. Debt 127.

L An Attorney ſhall have an Action of Debt againſt his Client for Money which he hath paid unto any Perſon for his Client, for Coſts of Suit, or unto his Counſel, &c.

3 Ed. 4. 26. The Writ ſhall be general, and the Count ſpecial.

M (*d*) If a Man contract to pay Money for a Thing which he hath bought; if he take a Bond for the Money, the Contract is diſcharged, and he ſhall not have an Action of Debt upon the Contract.

20 H. 6. 21. Newton. 28 H. 6. 4. 39 H. 6. 22. ac. 1 H. 6. 8. per Babbington. 9 Ed. 4. 20. and ſo 10 H. 7. 21 and 24. 22 H. 6. 16. 21 H. 7. 5. Carter. 3 H. 4. 17.

N (*e*) If a Man maketh a Leaſe for Years, rendering Rent, of Lands deviſeable by Will, and afterwards deviſeth the Reverſion of the ſame Lands unto a Stranger in Fee, the Deviſee ſhall have an Action of Debt for the Rent reſerved, without any Attornment of the Tenant for Years. But if the Leſſor hath granted the Reverſion by Fine or Deed, the Grantee ſhall not have an Action of Debt without Attornment of the Leſſee for the Rent reſerved.

5 H. 7. 18. ac. ſo Lord by Eſcheat of a Reverſion.

O (*e*) If a Man be indebted, and entereth into Religion, his Executors ſhall be ſued for the Debt, and not the Abbot who accepted him into Religion.

4 Ed. 4. 25. Danby, 5 H. 7. 24. Brion, 13 H. 4. Debt 167. 5 H. 5. 8.

(*a*) See 7 *H.* 4. 3. *Note*; This Allowance before Auditors is made Parcel of the Account, and as well of Record, and therefore on ſuch Surpluſage, Debt lies againſt the Executors. See 10 *H.* 6. 25. ſo adjudged.

(*b*) Becauſe a Bailiff by his Office is bound to be at Expences, 29 *Ed.* 3. 20. and ſo it ſeems is a Receiver to merchandize, &c. and a general Receiver retained to travel for his Reſceits, &c. *Contr.* of a Receiver of a certain Sum, for he ſhall have no Allowance of ſuch Expences as he makes without Orders; and *note*, in ſuch Action for Surpluſage by a Bailiff or Receiver, he ſhall wage his Law. 14 *H.* 6. 24. 36 *H.* 6. 6. For the Auditors are made Judges in Advantage of the Maſter, and not of the Bailiff; and this was ſo at Common Law; *ſed contr.* adjudged by all the Juſtices in *C. S.* 21 *H.* 6. 16. 19 *Ed.* 2. *Debt* 176.

(*c*) See 41 *Ed.* 3. *Debt* 127. 13 *Ed.* 4. 4. 22 *Ed.* 3. 8. 5 *H.* 7. 25. 39 *H.* 6. 22. 22 *H.* 6. 56. (*L.*) 10 *H.* 4. *Debt* 158.

(*d*) But it is otherwiſe, if a Stranger makes an Obligation for the ſame Debt. 35 *Ed.* 3. *Debt* 83. See 11 *H.* 4. 79. 13 *H.* 4. 1. 10 *H.* 7. 21.

(*e*) See 13 *H.* 4. *Debt* 167, 467. 4 *Ed.* 2. *Ib.* 171. 5 *H.* 7. 18. 34 *H.* 6. 6. *Lit.* 130. (*O.*) See 5 *H.* 5. 8. 9 *Ed.* 2. *Debt* 171. but 5 *H.* 7. 20. 4 *Ed.* 4. 25. 18 *Ed.* 4. 19. ſeem *contr.*

7 H. 6 5. 1 H. 6 Debt 26. 7 H. 4. 4. 4 Ed. 4. 16. 22 Ed. 4. 67. 7 H. 4. 14. 4 Ed. 4. 16. 22 Aff. 74. 21 Ed. 4. 67. 14 H. 7. 15, 19, 20. 11 H. 4. 44. Skrene.

P (*a*) If a Man be condemned in Treſpaſs, or in Debt upon a Bond, where he denieth his Deed, and afterwards he is taken by a *Capias pro fine* at the King's Suit within the Year, and committed to Priſon; if the Gaoler ſuffer him to eſcape, he ſhall have an Action of Debt againſt the Gaoler: Yet he was not committed to Priſon at his Suit, but at the King's Suit. But within the Year after the Condemnation and Judgment, the Suit for the King ſhall ſerve as well for the Party as the King, becauſe the King was intitled to it by the Party, but after not: For it ſhall be intended that the Party is agreed with him who is condemned, and therefore after the Year he ſhall be put to his *Scire facias* upon the Judgment (*b*).

[122.]

9 Ed. 3. 7. Debt 149. 19 H. 6. Debt 143.

A (*c*) If a Man leaſeth Lands for Term of Years, rendering Rent, and afterwards the Rent is behind, and the Leſſee ſurrendereth his Term, yet the Leſſor ſhall have an Action of Debt for the Arrearages before, as it ſeemeth by *P.* 38 *Ed.* 3. *tamen quære*, for the Opinion is contrary to 2 *H.* 6.

Vide 14 H. 8. 14. for Waſte. 7 H. 6. 2.

B If a Servant will not do his Service, by the Statute of 24 *Ed.* 3. *cap.* 9. he ſhall be arreſted and committed to the Gaol; and if the Gaoler ſet him at large, he ſhall loſe ten Pounds to the King, and five Pounds to the Party. Now if the Gaoler ſet ſuch Priſoner at large, the Party who would have him detained, ſhall have an Action of Debt againſt the Gaoler.

43 Ed. 3. 2.

C If a Man recover Damages in an Action of Waſte, he may have an Action of Debt upon the Recovery, if he will.

3 Ed. 4. 27. Quære. 43 Ed. 3. 2.

D And ſo a Man may have an Action of Debt upon a Statute-merchant or Staple, or upon a Recognizance, or may have Execution according to the Statute, at his Pleaſure.

E A Prior did recover an Annuity in Fee againſt a Parſon, and afterwards he ſued a *Scire facias* againſt the Parſon, and did recover in the *Scire facias* the Arrearages of the Annuity, and afterwards he brought an Action of Debt againſt the Parſon upon the Recovery in the *Scire facias* for the Arrearage, and it was maintainable.

(*a*) See 14 *H.* 7. 15. 4 *Ed.* 4. 16. 36 *H.* 6. 24. 22 *Aſſ.* 73. *Note*; In Debt on Obligation, the Defendant denies his Deed, but found againſt him; Judgment is given, and he taken by *Capias pro fine*, and the Plaintiff prayed an *Elegit*. *Stoner* ſaid, he ſhould make Fine and Diſcharge; but *Green contr.* 17 *Ed.* 3. 57. and ſee a Diverſity *inter* Debt and Treſpaſs, 50 *Ed.* 3. 4. See 11 *H.* 7. 15. 13 *H.* 7. 21. 7 *H.* 6. 6. 6 *Ed.* 4. 4. 1 *H.* 7. 10, 20. 36 *H.* 6. 33. 7 *H.* 4. 4. And *Note*, the Caſe here put is *Somers*'s Caſe in Debt on an Eſcape, where it was held, That notwithſtanding the taking of the Party *pro fine*, yet the Plaintiff may pray Execution by *Elegit*; but yet becauſe the Party Plaintiff ſhall be ſatiſfied his Execution before the King ſhall be ſatiſfied the Fine, he ſhall be adjudged to be in Execution for the Party, as well as for the King, ſo that the Sheriff ought not to diſmiſs him, although the King had pardoned the Fine by Aſſent of the Party. Alſo, by the Writ againſt the Warden, if he proved by Relation, that he elected him to be in Execution for him *ab initio.* —*Quære*, if the King pardons him, and yet the Sheriff detains him, and afterwards he who recovered, ſues an *Elegit*, if the Impriſonment after the Fine be puniſhable.

(*b*) But after the Year he may pray that the Party be in Execution for him; ſo if he be taken *pro fine (ut ſupra)* in ſuch Caſe Action or *Capias* does not lie as in Aſſiſe, Rediſſeiſin, *&c.*

(*c*) *Note*; He who ſurrenders in Fact, ſhall have the Emblements, 30 *Ed.* 3. 9. that by the Surrender of Parcel, the whole Rent is extinct; *per Monſon.* 14 Eliz. *Note*; Surrender is a good Plea in Bar for Rent incurred after, 9 *Ed.* 3. 7. *Note*; The Caſe is ſtronger if it be of a Leaſe for Lives, and yet ſuch was held good, but over-ruled for miſcounting, *i. e.* not ſhewing the Commencement. 30 *Ed.* 3. 10. See 14 *H.* 6. 41. 38 *Ed.* 3. 10. *contr.* 19 *H.* 6. 4.

F (*a*) An Abbot ſhall be charged in an Action of Debt for Victuals, or other neceſſary Things bought by the Butler, or other Officer who is deputed to make Purveyance for the Abbey in Time of Vacation.

26 Ed. 3. 55. Debt 165.

G (*b*) If a Man levy Aid of his Tenants for the Marriage of his Daughter, and dieth, the Daughter not married, the Daughter ſhall have an Action of Debt againſt the Executors of her Father for the Aid levied; and if the Executors have not any Thing, ſhe ſhall have an Action of Debt againſt the Heir for that Aid, if he have any Thing by Deſcent.

3 Ed. 3. Itin. North. Fitz. Debt 57.

See 82. Lac.

H (*c*) If two Coparceners make Partition, and one granteth or promiſeth unto the other a certain Sum of Money for the Equality of the Partition, ſhe ſhall have an Action of Debt upon this Promiſe, and ſhall recover the Money.

30 Ed. 3. Debt 131.

I (*d*) If a Man make a Tally, and make Bond thereupon, and ſeal and deliver it as his Deed, yet it ſhall not bind him, but he may plead againſt the ſame, that he owed him nothing, or wage his Law. For an Obligation ought to be made in Writing in Parchment or Paper, and not written upon any Piece of Wood, as a Tally is.

12 R. 2. Debt. 44 Ed. 3. 21. 44 Ed. 3. 2. & 9 H. 5. 24.

K And a Man ſhall have an Action of Debt againſt him who becometh Pledge for another upon his Promiſe to pay the Money, without any Writing made thereof; *quod vide* in Title *Pledge acquietand'*, *P.* 43 *Ed.* 31.

If a Man become Debtor for another by Word, it ſhall not make him Debtor, if not by the Cuſtom of London.

(*a*) So for Money borrowed or lent, which came to the Uſe of the Houſe, 41 *Ed.* 1. *Debt* 127. ſo if the Commonk makes a Deed, teſtifying the Debt. 4 *Ed.* 2. *Debt* 168. and ſee 35 *Ed.* 3. 48. 26 *Ed.* 3. 55. 7 *Ed.* 3. *Debt.*

(*b*) See 3 *Ed.* 3. *Debt* 157. it ſhall be in the *Debet* againſt an Heir.

(*c*) 14 *Ed.* 3. *Debt* 137. *Co. Lit.* 169. *b.*

(*d*) See 2 *R.* 2. *Debt* 4. 12 *H.* 4. 23. 25 *Ed.* 3. 40.

(a) *Writ* de rationabili Parte Bonorum.

If the Father hath two Sons, and maketh one of them his Executor, Quære if he ſhall have any Part as Son, becauſe he is Executor, and hath Advancement by that.

THIS Writ lieth where the Wife after the Death of her Huſband cannot have the third Part of her Huſband's Goods after the Debts are paid, and Funeral Expences performed: For then ſhe may have this Writ againſt the Executors of her Huſband: And it ſeemeth by the Statute of *Magna Charta*, *c.* 18. that this was the Common Law of the Realm; and ſo it appeareth by *Glanvil*, that it is the Common Law, that after the Debts paid, the Goods ſhall be divided into three Parts: One Part for the Wife, another Part for Sons and Daughters, and the third unto the Executors; but yet the Writs in the Regiſter rehearſe the Cuſtoms of the Counties, and are of this Form:

A Woman did demand the Moiety of her Huſband's Goods, becauſe he had no Children, and counted upon the Cuſtom of the Realm. 31 Ed. 3. But 21 H. 6. 1 and 2. ſeemeth, it is by Cuſtom, and not by the Law of the Land, 7 Ed. 4. 20. ac. M. 19. and 20 Eliz. in B. R. A Writ was brought and allowed there, notwithſtanding that Exception was taken at it, that it was maintainable by ſpecial Cuſtom in London. 1 Ed. 4. 5. Pilling. ac.

30 H. 6. Reſpond. 95. A Woman brought the Writ for the Moiety, and counted upon the Cuſtom, not ſpeaking of any Town, or that it was the Cuſtom of the Realm. 28 H. 6. 4. 40 Ed. 3. 8. 3 Ed. 3. Debt 156. Counts by the Cuſtom of the Town of Northampton, 17 Ed. 99 and 76. and that it is by the Common Law. 7 Ed. 4. 20. Exception was taken, becauſe he did not count that the Cuſtom did continue.

29 Ed. 3. 10.

The King to the Sheriff, &c. *If* A. *who was the Wife of* B. *&c. ſhall make you ſecure*, &c. *then ſummon*, &c. C. *and* D. *Executors of the Teſtament of the aforeſaid* B. *that they be*, &c. *to ſhew* (*b*) *wherefore, whereas according to the Cuſtom which has hitherto obtained in the County aforeſaid, Wives after the Death of their Huſbands ought to have a reaſonable Part of the Goods and Chattels of their ſaid Huſbands, they the ſaid Executors unjuſtly detain from the aforeſaid* A. *her reaſonable Part, to the Value of ten Marks, of the Goods and Chattels which were of the aforeſaid* B. *ſome time her Huſband, and refuſe to render the ſame to her, to the great Damage and Grievance of her the ſaid* A. *and contrary to the Cuſtom aforeſaid: And have there the Summoners and this Writ*, &c.

2 Ed. 2. Fitz. Detinue 561. 30 Ed. ib. 52.

And the like Writ the Sons and Daughters may have againſt the Executors; and the Form is:

And ſee 31 H. 8. It hath oftentimes been put in Ure at Common Law, and never demurred upon.

(*a*) *Note*; This Writ is not *Debet* but *Detinet*, and ſo is not within the Stat. 21 *Jac.* 1. of Limitation of Actions; adjudged *Trin.* 6 *Car.* 1. in *C. B. Sherwins*'s Caſe.

See 30 *Ed.* 3. 26. That it does not lie againſt Executors, *&c.* nor againſt a Stranger who is poſſeſſed of Goods only, 39 *Ed.* 3. 9. yet it ſeems to lie againſt an Adminiſtrator *de bonis non*, by Cuſtom in *Suſſex*, that where the Father dies ſeiſed of Goods, his Heir ſhall have a reaſonable Part. See 7 *Ed.* 4. 2. 31 *Ed.* 3. 25. 1 *Ed.* 2. *Detinue* 56. 31 *H.* 8. *Bro. rationabil. Part.* 6. 17 *Ed.* 3. 9. 17 *Ed. Detinue* 78. or 58. *F. Detinue* 32. 34 *Ed.* 2. *Detinue* 60.

(*b*) See the Writ, *Quare cum ſecundum Conſuetudinem totius Regni Angl. uſitat' & approbat'*, *&c.* adjudged good. 30 *Ed.* 3. 26.

The King, &c. *Becauſe* A. *of* N. *and* S. *his Siſter, have made us ſecure*, &c. *ſummon*, &c. I. *of* H. *and* E. *Executors of the Teſtament of* R. *of* N. *that they be*, &c. *to ſhew wherefore, whereas according to the Cuſtom which hath hitherto obtained and been approved in the County aforeſaid, the Children after the Death of their Fathers, who are not their Heirs* (*a*) *nor were promoted in the Life of their Fathers, ought to have their reaſonable Parts of the Goods and Chattels which were of their Fathers aforeſaid, they the ſaid Executors unjuſtly detain from the aforeſaid* A. *of* N. *and* S. *after the Death of the aforeſaid* R. *their Father, whoſe Heirs they are not, nor who in the Life of their ſaid Father were promoted, their reaſonable Parts to the Value of ten Pounds*, &c. (as above).

Marriage is no Advancement, if the Father's Goods be not given in his Life, for Iſſue was taken thereupon. 3 Ed. 3. Dett 155.

Secta ad Molendinum.

M SECTA *ad Molendinum* lieth, where a Man by an Uſage Time out of Mind, *&c.* hath uſed to grind his Corn at the Mill of *B.* and afterwards he goeth unto another Mill, and (*b*) withdraweth his Suit from *B.*'s Mill, then may he have this Writ. And alſo it ſeemeth, that the Lord may have this Writ againſt his free Tenants who hold of him to do Suit at his Mill, and yet he may diſtrain his Tenants for the Suit, and avow for the ſame.

Quære, If a Man may create a Tenure at this Day upon a Gift in Tail, or ſuch Eſtate, P. 20 Eliz. Com. B. A Leaſe was made for Life of Parcel of the Demeſnes doing Suit to his Mill, and good.

A (*c*) And by Preſcription a Man may have Suit to his Mill of the Villains of a Stranger, and have *Sectam ad Molendinum* againſt them, and that it ſeemeth by reaſon of their Reſidence in certain which they dwell upon. And this Writ is ſometimes *Vicontiel*, and ſhall be ſued in the County by a Writ of *Juſticies*, at the Plaintiff's Pleaſure, or in the Common Pleas by a *Præcipe*, *&c.* and the Form of the Writ in the County is ſuch:

The King to the Sheriff, &c. *We command you, that you juſtice* A. *that juſtly and without Delay he do his Suit to the Mill of* E. *of* N. *in* C. *which he oweth to it, and hath been uſed to do, as it is ſaid, as he can reaſonably ſhew that he ought to do the ſame to it, that we may hear no more Clamour for want of Juſtice. Witneſs*, &c.

[123.]

Note, That Tenant for Life of a Manor ſhall not have this Writ, becauſe it is in the Debet & Solet. 20 Eliz. Dyer. Br. Note 127, 128. Curia Claudenda lieth for Tenant for Life, and yet the Writ is, Debet & Solet.

(*a*) So *Note*, the Marriage is excluded. 1. If it be not by her Father. 2. If ſhe be not promoted. 3 *Ed.* 3. *Debt* 156. See 1 *Ed.* 2. *Detinue* 56, 186. 30 *Ed.* 3. 26. 39 *Ed.* 3. 9. 40 *Ed.* 3. *Bro. rationab. Part.* 8.

(*b*) *Note* in *Mich.* 3 *Car.* 1. it was held in the Exchequer, that if the King has a Manor by Wardſhip or otherwiſe, within which is a Mill, all the Tenants Cuſtomary and others within ſuch Manor ſhall grind their Corn at the ſaid Mill, though they are not bound thereto by Tenure or otherwiſe, *viz.* during the King's Seiſin; and this by the ancient Prerogative of the King.

(*c*) See 22 *H.* 6. 14. *Secta ad Molend.* may be maintained as well by Preſcription againſt the Reſiants, as by Tenure againſt the Tenants.

See 29 *Ed.* 3. 12, 17. *Note* there, the Writ was, that he had ſuffered ſix Villains of the ſame Vill, who held ſix Carves, *&c.* and who ought to grind their Corn growing in the ſame Lands at his Mill, and ſhews how much each held, and alſo ſhewed Seiſin and Explees, and recovered.

And if the Writ be ſued in the Common Pleas, the Writ ſhall be thus: *Command* A. *that juſtly and without Delay he do Suit to the Mill of* E. *of* N. *in* C. *which he oweth to it, and hath been uſed to do, as it is ſaid: And unleſs he will do it*, &c. *then ſummon*, &c.

And by the Rule in the Regiſter, a Man ſhall have a Writ of *Secta*, *&c.* B
quod faciat ſectam ad furnum, & ad thorale, & ad omnia alia hujuſmodi. And
Tenant for Life, or in Dower, may maintain this Writ in the *Debet & ſolet*,
for this is of the Nature of a Writ of the Poſſeſſion: But in the *Debet* only
ſeemeth to be in the meer Right. And the Defendant ſhall have a View in a C
Secta ad Molendinum in the *Debet & ſolet* of Land, *&c.* of the Mill in which
the Suit is to be done (*a*). And the Proceſs in a *Secta ad Molendinum* ſhall D
be Summons, Attachment and Diſtreſs, *&c.* and if he do appear after Default,
then ſhall iſſue a *Diſtringas ad audiendum Judicium*, and yet he may ſue his
Default (*b*). And you may ſee the Form of the Count in this Writ in the E
Book of *Entries*, where he counteth upon a Tenure of Land, *&c.* and another Count, where he counteth (*c*) upon Preſcription: *Sc.* that the Tenant,
and all thoſe which held thoſe Lands, have uſed to do their Suit at his Mill;
quod vide fol. 169.

Quod permittat.

QUOD *permittat* lieth where a Man hath Common of Paſture for his Cat- F
tle, and he is diſturbed by a Stranger, that he cannot uſe his Common,
then ſhall he have this Writ: And this Writ may be ſued by *Juſticies* in the G
County, or in the Common Pleas; and the Form of the Writ is,

27 H. 8. 12. *The King to the Sheriff*, &c. *We command you, that you juſtice* A. *that juſtly*, &c. *he permit* B. *to have Common of Paſture in* N. *for one hundred Sheep*, &c. or *for one hundred Oxen*, &c. *which he ought to have, as it is ſaid, as he can reaſonably ſhew, that we may hear no more Clamour thereupon*, &c. or thus, *Common of Paſture in the Land of him the ſaid* A. *which he ought to have therein*, &c. Or thus, *That he permit* A. *to have Common of Paſture in one hundred Acres of him the ſaid* A.

And the Rule in the Regiſter is, when Common of Paſture is claimed in the Land of any Perſon certain, then the certain Number of Cattle are not put in the Writ, *&c.* but the Form of the *Quod permittat* ſued in the Common Pleas is ſuch:

V. 2 H. 4. 13. View grantable in this Writ yet it is ſaid 3 Ed. 3. that the Defendant cannot vouch in a Quod permittat, for that it is not a Præcipe quod reddat. Vide 45 Ed. 3. 8. in the View.

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he permit* B. *to have Common of Paſture in* N. *and in forty Acres of Wood, which he ought to*

(*a*) See 17 *Ed.* 3. 29. But not to vouch, 4 *Ed.* 3. *View* 149. 13 *Ed.* 3. *Voucher* 116. yet Aid lies therein, although he were ſeiſed of the Suit by the Hands of him who prayed Aid. 17 *Ed.* 3. 64.

(*b*) See 12 *Ed.* 3. *Proceſs* 28. 18 *Ed.* 3. *Judgment* 120.

(*c*) See 17 *Ed.* 4. 64. 22 *H.* 6. 14. 28 *Ed.* 3. 12.

have, as it is ſaid: And unleſs he will do it, and the aforeſaid R. *ſhall make you ſecure*, &c. *then ſummon*, &c.

And another Form of the Writ for Common append. thus:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he permit* B. *to have Common of Paſture in* N *which belongeth to his Freehold in the ſame Town*, or *in another Town, of* (*a*) *which he the ſaid* A. *or the Father of the aforeſaid* A. *whoſe Heir he is, unjuſtly and without Judgment diſſeiſed* R. *the Father of the aforeſaid* B. *whoſe Heir he is, after the firſt Paſſage over of Lord* Henry *the Son of King* John *into* Gaſcony, *as it is ſaid: And unleſs*, &c.

Note; This Writ is in the Nature of a Writ of Entry upon a Diſſeiſin made to his Anceſtor.

H And the Rule in the Regiſter is, that the Writ of *Quod permittat* lieth of Common of Paſture, Turbary, Piſcary, and reaſonable Eſtovers, againſt a Diſſeiſor of a Diſſeiſin to the Plaintiff of his Anceſtors, by him and his Anceſtors, and not in other Degrees, becauſe he ought to have a Writ of Right in the *Debet & ſolet*.

But an Abbot may have a Writ of *Quod permittat* of a Diſſeiſin made unto his Predeceſſor, and ſhall make mention of the Diſſeiſin in his Writ.

I And the Form of the Writ *Of free* (*b*) *Fiſhery*, is ſuch:

The King, &c. *Command* A. *&c. that*, &c. *he permit* B. *to have free Fiſhery in the Water of him the ſaid* A. *in* N. or thus, *in the Water in* N. *which he ought and hath been uſed to have in the ſame, as it is ſaid: And unleſs*, &c.

K There is another Form of the Writ of *Quod permittat*, in the Nature of *Mortdaunceſtor*, and is ſuch:

The King, &c. *Command* A. *that*, &c. *he permit* B. *to have Common of Paſture in* N. *in which* C. *Father*, or *Mother*, or *Siſter of him the ſaid* B. *whoſe Heir he is, was ſeiſed, as of Fee* (*c*), *as belonging to his Freehold in the ſame Town, the Day whereon he died: And unleſs*, &c.

3 Ed. 25. Quod permittat 1.

L And if it be a Common in groſs, then he ought to put this Clauſe in the Writ, *As belonging to his Freehold*, &c.

And ſo a Parſon or an Abbot ſhall have a *Quod permittat* of the Seiſin of his Predeceſſor, and the Writ ſhall ſay,

Command, &c. *that he permit* B. *Parſon of the Church of* C. *to have Common of Paſture in* N. *of which* F. *ſome time Parſon of* C. *aforeſaid*, &c. *was ſeiſed, as in Right* (*d*) *of his Church aforeſaid, the Day whereon he died, as it is ſaid: And unleſs*, &c.

31 Ed. 3. Quod permittat 8.

30 Ed. 3. 3. Quod permittat 4.

A Prebend had the Writ for meaſuring a Water in the Time of his Predeceſſor.

And the Rule in the Regiſter is, that in the ſame Manner as is ſaid before of Common of Paſture, ſo it may be ſaid of all other Commons, as of Turbary, Piſcary, *&c.*

M And there are divers other Writs of *Quod permittat* of another Nature; as a Man ſhall have a *Quod permittat* againſt the Lord, to ſuffer his Villains to do Suit to his Mill, *&c.* and that accrueth by Uſage and Preſcription; the Writ is,

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(*a*) And *Note*; it ought make the Defendant privy to him that did the Tort. 13 *Ed.* 3. *Brief* 676.

(*b*) *Note*; A Præcipe does not lie *pro Piſcaria in Aqua*, but *pro Piſcaria* generally, for thereby the Soil itſelf is to be recovered. *Temp. Ed.* 1. *Brief* 861. 4 *Ed.* 3. *Feoffment* 79.

(*c*) *Ut de feodo*, add *& de jure.* 31 *Ed.* 1. *Brief* 874.

(*d*) *Ut de jure Eccleſiæ*, or *ut de feodo Eccleſiæ.* 31 *Ed.* 1. *Quod permittat* 8.

(*a*) *The*

[124.] *The King*, &c. *Command* A. *that juſtly and without Delay he permit* (*a*) *his Villains of* C. *to do Suit to the Mill of* B. *&c. in* E. *&c. And unleſs*, &c. *and the aforeſaid* B. *ſhall make you ſecure*, &c. *then ſummon*, &c. A

If the Miller taketh Toll, then Treſpaſs lieth: But if the Tenant of the Freehold take it, a Quod permittat. 41 Ed. 3. 24. & 44 Ed. 3. ac. Vi. Ed. 1. Br. Battail 13. 6. Quod permittat 9. a Quod permittat brought of Eſtovers.

And another Writ: *Command* A. *&c. that he permit* B. *to grind his Demeſne Corn of* N. *at the Mill of him the ſaid* A. *in* N. *quit of Multure, which he ought and hath been uſed to grind at the ſame Mill, as it is ſaid: And unleſs*, &c. Or, *Command* A. *&c. that he permit* B. *to draw Water at the Well of him the ſaid* A. *in* N. *as he ought and hath been uſed to draw at it, as it is ſaid: And unleſs*, &c. Or, *That he permit* B. *to water his Flock at the Water of him the ſaid* A. *in* N. *as he ought and hath been uſed to water it, as it is ſaid.* Or, *That he permit* B. *to have his free Bull in* N. *as he ought and hath been uſed to have, as it is ſaid.* Or, *That he permit* B. *to have a certain Way over the Land of him the ſaid* A. *in* N. *&c.* Or, *That he permit* B. *to have his free Fold in his Demeſne Lands in* I. *which he ought and hath been uſed to have.* Or, *That he permit* B. *to have free Fiſhery in the Water of him the ſaid* A. *in* N. *&c.* Or, *That he permit* B. *to have free Paſſage over the River* Humber *in the Ship of him the ſaid* A. *which he ought and hath been uſed to have in it, as it is ſaid*, &c. *And unleſs*, &c. But a Man ſhall not have a *Quod permittat of reaſonable Eſtovers in a Wood, or in Turbary, or in Heath, and the like.*

And the like by the Rule in the Regiſter, for in lieu thereof is given the Writ of Aſſiſe of *Novel Diſſeiſin* by the Statute of *Weſt.* 2. *cap.* 26.

And a Man ſhall have a Writ, *That he permit him to erect Ladders in the Soil of him the ſaid* L. *in* B. *contiguous to his Manſion, for covering and repairing his Houſes there, as often as need ſhall be, as he ought and hath been uſed to erect them, as it is ſaid: And unleſs*, &c.

And a Man may have a Writ of *Quod permittat* of a Corrody; as, *Command* P. *Prior*, &c. *that he permit* B. *to have competent Suſtenance for himſelf and one Boy in Victuals and Apparel, and in all other Neceſſaries, and in Provender for one Horſe every Day; and alſo competent Suſtenance for four Men of the Company of the ſaid* B. *four Boys, four Horſes, four Harriers, and four Sparrowhawks every Year, at the Feaſts of the Birth of our Lord*, Eaſter, *Pentecoſt, and All Saints, and for three Days after every of the ſaid Feaſts, in the Priory of* C. *&c. of which* E. *ſome time Prior of the Place aforeſaid unjuſtly*, &c. *diſſeiſed* F. *Father of the aforeſaid* B. *whoſe Heir he is, after the firſt Paſſage over of*, &c.

30 Ed. 1. Quod permittat 10. Br. Battail 13.

And in a *Quod permittat habere chiminum*, in the Nature of the Writ of Right, and to hold Suit, and dereign the Warrant, *&c.* the Defendant came and joined the Miſe upon the meer Right, and was received.

4 Ed. 3. 48. Quod permittat 7.

(*b*) And in a *Quod permittat* by a Parſon, he counted *of the Fee and Right*, and held Suit, and dereign, *&c.* and the Tenant came and gaged Battail, *&c.* *Tempore Regis Ed.* 1. B

And Tenant in Tail ſhall have a *Quod permittat* (*c*).

(*a*) See 17 *Ed.* 3. 67. 18 *Ed.* 3. 56, 57. 29 *Ed.* 3. 13. And *Note* that in this Writ Eſplees are bound in the Multure, and not in the Toll, for that the Mill itſelf is not in Demand. See 18 *Ed.* 3. 57. *ſi ne defend Damages ſolement.*

(*b*) 30 *Ed.* 1. *Quod permittat* 10.

(*c*) *Temp. Ed.* 1. *Quod permittat* 9. 4 *Ed.* 3. *pl.* 39. 4 *Ed.* 3. 2. ſo ſhall a Tenant for Life. 4 *Aſſ.* 3.

C (*a*) And in a *Quod permittat* of a Common the Tenant alledged the Darrein Seiſin in the Plaintiff; and it was adjudged a good Plea to abate the Writ. But there the Plaintiff counted of the Seiſin of his Anceſtor: For a Man ſhall have a *Quod permittat* of his own Seiſin, as it ſeemeth.

D And a *Quod permittat him to reduce a Watercourſe*, &c. which is miſturned, will well lie.

E And a Man ſhall have a *Quod permittat* againſt the Tenant of the Freehold for an Act done, or a Diſturbance done by a Stranger who was not Tenant of the Soil. 2 H. 4. 13. ac.

F And the Proceſs in a *Quod permittat* is Summons, Attachment and Diſtreſs: And if the Sheriff at the Summons return *Nihil*, the Plaintiff may pray a (*b*) *Capias* and have it, *Quod vide H.* 39 *Ed.* 2. 30 Ed. 3.

G And the Form of a Count in a *Quod permittat* appears in the Book of Entries, *fol.* 80. on the firſt Side.

H And if a Man build a Houſe, or a Wall, or other Thing which is a Nuſance unto the Freehold of another, and dieth; he whoſe Nuſance it is ſhall have a Writ *Quod permittat* againſt his Heir that did the Nuſance, and the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he permit* B. *to pull down a certain Houſe, or a certain Wall, or a certain Hedge, or a certain Mill or Ditch, which* R. *the Father, or other Anceſtor of the aforeſaid* A. (*c*) *whoſe Heir he is, unjuſtly and without Judgment built, to the Nuſance of the Free Tenement of* C. *the Father, or other Anceſtor of the aforeſaid* B. *whoſe Heir he is, in the ſame Town or in another Town after the firſt*, &c. *as it is ſaid, and unleſs he will do it*, &c. Or thus: *That he permit* B. *to raiſe or lower a certain Pool in* L. *which the aforeſaid* A. *unjuſtly lowered or raiſed, to the Nuſance of his Freehold, or of* C. *Father of the aforeſaid* B. &c. Or thus: *That juſtly*, &c. *he permit* B. *to bring back again the Courſe of a certain Water in* L. *into its right and ancient Courſe, which* C. *the Mother of the aforeſaid* A. *whoſe Heir he is, diverted, to the Nuſance*, &c. Or thus: *That juſtly*, &c. *he permit* B. *to open a certain Way in* N. *which* C. *Father of the aforeſaid* A. *whoſe Heir he is, unjuſtly ſtopped up*, &c.

(*a*) See a *Quod permittat* by Tenant in Tail in the *Debet & Solet*. 4 *Ed.* 3. 46. See 4 *Ed.* 4. 24. 3 *Ea.* 3. 25. and he ſhall declare on his Caſe. See 17 *Ed* 3. 67. a *Quod permittat* by Tenant for Life; ſo 4 *Aſſ.* 3.

Of Common, &c. See a *Quod permittat* of Common of Paſture of his own Seiſin, it ſhall bind Eſplees, *&c.* and he tendered Suit, *&c.* And the Writ was in the *Debet & Solet*. *Pole* defended it, and joined the Miſe or Iſſue, whether he had the better Right to hold in Severalty, (as he tendered it) or the Demandant to have the Common, *&c.* and Reſolved, 1. That the Writ being in the *Debet & Solet*, and ſo a Writ of Poſſeſſion, that the Miſe ſhould not be joined. 2. That he could not have a Writ of his own Seiſin in the *Debet*; but becauſe the Parties were agreed, that the Miſe ſhould ſtand, the Writ was amended, and *Solet* ſtruck out. *T.* 16 *Ed.* 3.

(*b*) And after Appearance a *Diſtringas* in lieu of a *Petit Cape*, and therefore in a *Quod permittat* againſt two, they ſhall not fourch *per Diſtreſs*. 38 *Ed.* 3. 1. *contra* 14 *H.* 4. See 30 *Ed.* 3. 3. *Note*; the Party there came in by the *Capias*, and therefore was put to Anſwer.

(*c*) Or *Prædeceſſor*, and therefore if the Writ be general, *ad Nocumentum liberi Tenementi ſui*, it is a good Plea to ſay, that it was not done in his Time. 2 *H.* 4. 13.

(*a*) And if a Man levy a Nuſance unto the Freehold of another, and he to whom the Nuſance is done maketh a Feoffment in Fee of the Land; and he who did the Nuſance maketh a Feoffment of the Land in which the Nuſance is; yet there is a Writ in the Regiſter for the Feoffee of him to whom the Nuſance was levied againſt the Feoffee of the other, to reform that Nuſance, and the Writ is ſuch:

The King to the Sheriff, &c. *Command* C. *that juſtly*, &c. *he permit* B. *to make broad a certain Way in* N. *which* C. *unjuſtly and without Judgment made narrow.*

[125.] Or Bailiw. But this Writ is not given by the Statute, but may ſue, *&c.* by the Statute *Weſt.* 2. *in Caſu conſimili*, *&c. c.* 2, 4.

34 Ed. 1. Br. Demand 43. And a *Quod permittat* of a Fair or Market ſhall be ſued in the Common Pleas; and the Writ is ſuch: A

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon* B. &c. *that he be before our Juſtices*, &c. *to ſhew wherefore he hath ſet up a certain Market*, *or a certain Fair in* I. *to the Nuſance of the free Market*, *or free Fair of him the ſaid* A. *in the ſame Town*, *or in another*, *after the firſt*, &c. *as it is ſaid. And have there the Summoners*, &c.

And the like Writ for the Heir, where the Father doth levy the Market or Fair unto the Nuſance of another Fair or Market; or for the Heir againſt him who levieth the Nuſance, *&c.*

Writ of Admeaſurement of Paſture.

THE Writ of Admeaſurement of Paſture lieth betwixt Commoners who have Common appendant to their Freeholds, if one of them ſurcharge the Common by putting in more Cattle in the Common, than he (*b*) ought to have Common for there, then that Commoner who is grieved ſhall have this Writ of Admeaſurement of Paſture; and by this Suit all the Commoners ſhall be admeaſured, as well thoſe who have not ſurcharged the Common, as he who hath ſurcharged it, and he who bringeth the Action ſhall be alſo admeaſured. B

8 H. 6. 26. Ant. 125.

(*a*) So is *Penruddock*'s Caſe, 5 *Co.* after a Requeſt to abate it. See 4 *Aſſ.* 3. 4 *Ed.* 3. 36. 5 *Ed.* 3. 43. The Father erects a Lime-kiln, which is a Nuſance to *B.* and after diſcontinues the Uſe thereof, and then *B.* makes a Leaſe for Life; then the Father uſes the Lime-kiln and dies, and the Son does not abate it on Requeſt; a *Quod permittat* lies againſt him: But if the Father had levied it before the Leaſe, and had from Time to Time uſed it during the Leaſe, then it had been otherwiſe. *Note*; The Writ there was, *Quod Pater levavit ad nocumentum liberi Ten'ti ſui.* The Defendant ſays, that he had a there, and uſed it before the Leaſe, *&c.*

It ſeems by the Statute, it ſhall be brought againſt him that did the Tort, and the Tertenants after the Alienation, *Weſt.* 2. *cap.* 24. alſo it lies for a Succeſſor; and *Note*; in ſuch Caſe the Alienee may have Aid of him in the Reverſion or Remainder. *Quære* 30 *Ed.* 3. 26. 4 *Aſſ.* 3. *Reg.* 194.

(*b*) *Note*; If *A.* grants to *B.* Common for one thouſand Cattle in four Carves, and after grants to *C.* Common in the ſame Land for one hundred Beaſts; if by the ſecond Grant the Beaſts of the firſt Grantee cannot have ſufficient, the ſecond Grant is void againſt *B.* 18 *H.* 6. 30. *Note*; The Writ ſhall be brought againſt him only who ſurcharges; and in this Writ all ſhall be admeaſured, but not to their Prejudice, ſeeing they are not Parties to the Suit. 8 *H.* 6. 26.

C (*a*) And the Writ is *Vicontiel*, and ſhall be directed unto the Sheriff, and ſhall not be returnable; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. A. *hath complained unto us, that* B. *and* C. *his Wife have unjuſtly ſurcharged his Common of Paſture in* N. *ſo that they have in it more Beaſts and Cattle then they ought to have, and belongs to them to have*; *and therefore we command you, that juſtly and without delay you admeaſure that Paſture, ſo that the aforeſaid* B. *and* C. *may not have in it more Beaſts and Cattle than they ought to have, and belougs to them to have, according to their Freehold which they have in the ſame Town, and that the aforeſaid* A. *may have in that Paſture ſo many Beaſts and Cattle as he ought to have, and belongs to him to have, that we may hear no more Clamour*, &c.

View in the Action. 3 H. 6. 26. Voucher; alſo 32 Ed. 3. Voucher 194.

Note, this Writ is Vicontiel, and the Statutes are the Judges by 7 Ed. 4. 23.

D (*b*) And if the Tenant ſurcharge the Common with his Cattle, *&c.* the Lord ſhall not have the Writ of Admeaſurement againſt the Tenant; but it ſeemeth the Lord may diſtrain the Surpluſage of the Cattle Damage-feaſant. And ſome ſay, that the Lord may have an Aſſiſe againſt the Tenant for the Surcharge, for that he is diſturbed of the Profit of his Land. *Quære* of theſe Caſes (*c*).

18 Ed. 3. Admeaſurement 7 a notable Caſe.

But if the Lord ſurcharge the Common, the Tenant ſhall not have a Writ of Admeaſurement againſt the Lord, but he ſhall have an Aſſiſe of Common againſt the Lord.

18 Ed. 2. 20.

(*a*) Admeaſurement ſeems not to lie for Common appendant, or for Common by Specialty *ſans* Number; but for him who has Common appurtenant, or a certain Common by Grant or Specialty if he ſurcharge. 22 *Aſſ.* 55.

(*b*) He cannot diſtrain the Surplus, where the Tenant has Common appendant, until it be admeaſured, 10 *Ed.* 3. 51. 18 *Ed.* 3. *Admeaſurement* 7. *per Curiam*, and yet he may approve it.

Note; The Lord may have an Admeaſurement; but he himſelf ſhall not admeaſure, *Temp. Ed.* 1. *Admeaſurement* 12. See 6 *Co.* 54. *Corbet*'s Caſe.

(*c*) See *Bract.* 229. That the Lord may have Admeaſurement againſt his Tenant, or *e converſo* for a Commoner againſt the Lord. *Temp. Ed.* 1. *Admeaſurement* 16. Not againſt the Lord, becauſe he cannot approve, but againſt the Tenant who is not Lord. *Ibid.* 11. 18 *Ed.* 3. 80. *Admeaſurement* 7. If there are two Neighbours in a Vill, who intercommon each in the other's Land, Admeaſurement does not lie between them; but if there are three Neighbours *A. B.* and C. and each intercommons in the other's Land; if one of them ſurcharge, the whole Admeaſurement lies, for he had Common in the Lands of the three, *&c.* But where there are only two Neighbours *A.* and *B.* Admeaſurement does not lie, for there on a Surcharge, the Remedy is by Aſſiſe as Tertenant, and not as a Commoner; and a Tertenant cannot be admeaſured; but where there are three Commoners or more who intercommon, each ſhall be admeaſured in the Lands of the other, 18 *Ed.* 3. 43, 30. *Admeaſurement*, when againſt Tenant of the Soil. *ibid.* 4. See 18 *Ed.* 3. *Admeaſurement* 7. 19 *Ed.* 3. 30.

Note; The Writ of Admeaſurement lies, tho' the Plaintiff has diſſeiſed the Tenant of the Common, if he continues ſeiſed of the Land to which, 8 *Ed.* 2. *Admeaſurement* 14. And if the Defendant has Common appendant to his Freehold in three Vills, it may be admeaſured for the Lands in one of the Vills. *Temp. Ed.* 1. *ibid.* 15. *Note* there, if one has Common appendant, and the Lord of the Soil grants him Common there for two hundred Beaſts more, whereby the Common is ſurcharged; Admeaſurement lies againſt him, and he ſhall admeaſure within the Number granted him, and ſhall be put to vouch his Grantor to Warranty. *Temp. Ed.* 1. *ibid.* 16. and *Brief* 862. See 22 *Aſſ.* 65. *Admeaſurement* 11.

Note; If the Lord leave ſufficient Common, but the Way is not at ſo good Eaſe or Plight as it was before, Aſſiſe of Common lies, by *Stourt.* 11 *H.* 4. 26.

See 179. E. 126. D. E. And ſo if the Lord do make Approvement of the Common unto himſelf, and do not leave ſufficient Common to the Tenant, the Tenant ſhall have an Aſſiſe, and not a Writ of Admeaſurement. And he who hath Common appurtenant certain, or Common by Grant certain, ſhall be admeaſured; and a Tenant ſhall have an Admeaſurement againſt him; but he who hath a Common appurtenant without Number, or Common in groſs without Number, ſhall not be ſtinted, nor a Writ of Admeaſurement doth not lie againſt him.

E And in the Time of *Ed.* 1. it was agreed, That one Neighbour ſhall have a Writ of Admeaſurement againſt another, where they intercommon by reaſon of Neighbourhood.

F And if the Sheriff will not make the Admeaſurement, he ſhall have an *Alias* and *Pluries*, *vel Cauſam nobis ſignifices.* And if he do not return the *Pluries*, he ſhall have an Attachment againſt the Sheriff. And the Plea may be removed out of the County by a *Pone*, at the Suit of the Plaintiff, without ſhewing Cauſe in the Writ. But at the Suit of the Defendant he ought to ſhew Cauſe in the Writ; and the Writ of *Pone* is ſuch:

Put, at the Petition of the Plaintiff before our Juſtices, &c. *ſuch a Day, the Plea which is in your County by our Writ between* A. *and* B. *of Admeaſurement of Common of Paſture in* N. *and ſummon,* &c. *the aforeſaid* B. *that he be then there to anſwer the aforeſaid* A. *thereupon,* &c. *And have,* &c. *this Writ and the other Writ.*

7 Ed. 4. 22. Danby. G And upon this Writ of Admeaſurement the Plaintiff ſhall enter his Plaint into the County before the Sheriff, as he ſhall do in a Replevin ſued by Writ, and upon that the Sheriff ſhall make a Warrant againſt the Defendant, *&c.* and warn him to appear; and if he come and plead nothing in Bar, or grant it, then the Sheriff ſhall make the Admeaſurement.

In a Writ of Admeaſurement brought againſt one of Common in *D.* the Defendant ſaid that he had Lands in *B.* and *S.* to which he had Common in the ſame Place, and yet the Writ good; for it is holden there, that the Ouſter of the Surcharge ſhall not be in the ſame Place only, yet it ſeemeth all the Common ſhall be admeaſured. *Temp. Ed.* 1. *Admeaſ.* 15.

But if the Defendant ſhew Cauſe unto the Sheriff wherefore the Admeaſurement ſhould not be made, then the Sheriff ought not to make Admeaſurement upon this Writ; but the Plaintiff ought to remove the Plea by a *Pone* into the Common Pleas, by which *Pone* the Defendant ſhall have Day for to appear, *&c.* And if he appear not, then ſhall iſſue a *Diſtringas* directed to the Sheriff to diſtrain the Party, and ſuch Day ſhall be given by that Writ, that two Counties may be kept between the Date of the Writ and the Return, and in the Counties Proclamation ſhall be made, that he come and ſhew Cauſe why the Admeaſurement ſhould not be made. And if he do not come at the Return of the *Diſtringas*, then a Writ ſhall be awarded unto the Sheriff, to make the Admeaſurement by his Default; and that is given by the Statute of *Weſt.* 2. *cap.* 8. and the Writ is,

H *The King to the Sheriff,* &c. *Whereas* A. *hath lately complained to us, that* B. *and* C. *have ſurcharged his Common of Paſture in* N. *ſo that they have more Beaſts and Cattle in it than they ought to have, and belongs to them to have:*

Wherefore we commanded you, that juſtly and without Delay you ſhould cauſe that Paſture to be admeaſured, ſo that the aforeſaid B. *and* C. *may not have in it more Beaſts and Cattle than they ought to have and belongs to them to have, according to their Freehold in the ſame Town*; *and that the aforeſaid* A. *may have in that Paſture ſo many Beaſts and Cattle as he ought to have and belongs to him to have,* &c. *that we might hear no more Clamour,* &c. *and you have done* (*a*) *nothing thereupon, as we have received Information from him the ſaid* A. *And whereas we have ordained in our Writ of Admeaſurement of Paſture, that after the Grand Diſtreſs Days ſhall be given, within which two Counties may be holden, at which Proclamation ſhall be made, that the Defendant ſhall come in to anſwer the Plaintiff*; *at which Day, if he ſhall not come, Admeaſurement may be made by Default:* [126.] *We command you, as we have heretofore commanded you, that juſtly and without Delay you cauſe the aforeſaid Paſture to be admeaſured, according to the Tenor of our other Writ thereof to you directed, and according to the Form of our Statute thereof provided and ſet forth, that we may not be again ſolicited upon this Matter by the aforeſaid* A. *Witneſs,* &c.

A And when the Plea is removed by *Pone* in the Common Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff ſhall count againſt the Defendant; and ſee the Form of the Count in the Book of *Entries*, fol. 128.

B And if the Defendant do grant to have the Admeaſurement, a Writ ſhall iſſue to the Sheriff to make Admeaſurement, which ſhall be ſuch:

The King to the Sheriff, &c. *We command you, that having taken with you twelve,* &c. *by whom,* &c. *who neither,* &c. *you go in your own Perſon to admeaſure the Common of Paſture, and by their Oath you cauſe the Common of Paſture aforeſaid to be admeaſured, ſo that the aforeſaid* S. *and* D. *may not have more,* &c. *and to them belongeth not to have, according to their Freehold which they have in that Town: And that the aforeſaid* R. *may have in that Paſture ſo many Beaſts and Cattle as he ought to have and belongs to him to have, according to his Freehold which he hath in that Town, and the Admeaſurement, which,* &c. *you make known before our Juſtices under your Seal and the Seals of thoſe,* &c.

C After the *Pone* returned to remove the Plea out of the County, if the Defendant make Default at the Day of the Return of the Writ, then ſhall iſſue a Writ to the Sheriff to diſtrain the Defendant, and in the Writ ſhall be contained, that he make open Proclamation in two Counties, *&c.* that the Defendant come into the Common Pleas at the Day of the Return of the *Diſtringas*, to anſwer to the Plaintiff, *&c.* And if the Sheriff return the Writ ſerved, and the Defendant doth not come, then ſhall iſſue a Writ to the Sheriff to make the Admeaſurement.

D And it appeareth by the Book of *Entries*, fol. 123. That a Writ of Admeaſurement doth not lie againſt the Lord of the *Soil* (*b*). See 125. D.

(*a*) *Note*; Though *nihil* be returned to each of the three Writs, yet by the Statute they ſhall proceed to the Admeaſurement.

(*b*) See 2 *H.* 6. 41. And there ſome hold that the Defendant ſhall have Admeaſurement. See 8 *H* 6. 27. 9 *H.* 6. 41. 2 *Inſt.* 83.

E And if a Man be once admeaſured by a Writ of Admeaſurement directed unto the Sheriff by the Sheriff, *&c.* and afterwards he ſurchargeth the Common again, then the Party who ſued the firſt Writ ſhall have a Writ to the Sheriff, called a Writ *De ſecunda Superoneratione*; and the Writ is ſuch:

18 Ed. 3. 20. Admeaſurement 7. ac', and there holden that it lieth not againſt the Feoffee of the Lord of Part of the Demeſnes, ſo that the Feoffee is in the ſame Degree as the Lord himſelf. 8 Ed. 2. Admeaſurement 14. In Admeaſurement of Paſture the Defendant ſaid, that the Demandant, pendent the Writ, had ejected him of the Common, and no Plea; for notwithſtanding that he had not the Common, he held the Land for which the Common is ſurcharged.

The King to the Sheriff, &c. A. *hath ſhewed unto us, that whereas he lately brought to you our Writ of Admeaſurement of his Common of Paſture in* N. *which* B. *unjuſtly ſurcharged; and you did admeaſure that Paſture by our Command, as the Cuſtom is in our Realm,* &c. *he the ſaid* B. *hath unjuſtly ſurcharged that Paſture after the aforeſaid Admeaſurement, to the great Expence and Grievance of him the ſaid* A. *and contrary to the Form of the Statute hereupon provided: And becauſe we will relieve the ſaid* A. *as we are bound to do, according to the Form of the ſame Statute, we command you, that you go in your own Perſon to that Paſture, and diligently inquire, by the Oath of honeſt and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, touching the ſecond Surcharge of the ſame Paſture; and if you ſhall find by that Inqueſt, that the Paſture was again unjuſtly ſurcharged by the aforeſaid* B. *after the Admeaſurement, then that you anſwer to us at the Exchequer for the Beaſts beyond the due Number put into the Paſture after the firſt Admeaſurement, or for the Price of them, and remove the Surcharge aboveſaid.*

F And it appeareth by this Writ, that a Man ſhall have a Writ *De Superoneratione* upon the firſt Writ of Admeaſurement of Paſture, which is *Vicontiel*, and directed to the Sheriff, if the Sheriff make Admeaſurement upon that Writ, and afterwards the Defendant ſurcharge the Common again, as well as upon a Writ of Admeaſurement awarded out of the Common Pleas upon a Judgment there given, *&c.* But upon the Writ of Admeaſurement awarded to the Sheriff, by which he maketh Admeaſurement, if the Defendant ſurcharge the Common after, the Writ of *ſecund' Superoneratione* ſhall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of Admeaſurement, *&c.* if the Defendant ſurcharge the Common, the Writ of *ſecunda Superoneratione* ſhall be awarded out of the Common Pleas; and the Form of the Count in a Writ of Admeaſurement is ſuch:

G *And whereupon the aforeſaid Plaintiff complains, that whereas he is ſeiſed of one Meſſuage with the Appurtenances in* S. *to which he the ſaid Plaintiff hath and ought to have Commmon of Paſture, with four Horſes, in one hundred Acres of Paſture called* B. *every Year throughout the whole Year, appurtenant. And the aforeſaid Defendant is ſeiſed in his Demeſne as of Fee of four Yard-lands with the Appurtenances in the ſame Town, to which the ſaid Defendant hath and ought to have Common of Paſture, with one hundred Horſes and twenty Oxen,* &c. *every Year throughout the whole Year, appurtenant; the aforeſaid Defendant hath unjuſtly ſurcharged the Common of Paſture aforeſaid called* B. *ſo that he hath more Beaſts and Cattle in it than he ought to have, and to him belongs to have; whereupon he ſaith that he is injured, and hath ſuſtained Damage to twenty Pounds, and prays Admeaſurement.*

H And by the Writ of *Secunda Superoneratione* the Plaintiff ſhall recover his Damages againſt him that was Defendant in the firſt Writ, and alſo he ſhall forfeit unto the King the Cattle which he put in over the due Number after the Admeaſurement made. And all this is by the Statute of *Weſt.* 2. *Vide ant.* 125.

I (*a*) And note, That by the Writ of Admeaſurement all the Commoners ſhall be admeaſured as well as thoſe who were Parties to the Writ. But yet if any of thoſe who are Commoners, which were not Parties to the Writs of Admeaſurement, *&c.* do ſurcharge the Common after Admeaſurement, they ſhall not forfeit their Cattle, nor the Value of them that were in the Paſture above the due Number, becauſe they were not Parties to the firſt Writ, nor the Party ſhall recover Damages againſt them for this Surcharge in this Writ. For the Writ of *Secunda Superoneratione* doth not lie but only againſt him, [127.] againſt whom the firſt Writ was ſued forth.

Writ de Reparatione facienda.

A THE Writ *de Reparatione facienda* lieth in divers Caſes; one is, where 11 Co. 82. b. there are three Tenants in Common or Joint, or *pro indiviſo* of a Mill or a Houſe, *&c.* which falls to Decay, and one will repair, but the other will not repair the ſame, he ſhall have this Writ againſt them; and the Writ is ſuch:

B *The King to the Sheriff*, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. *and* C. *that they be*, &c. *to ſhew wherefore whereas they the ſaid* A. B. *and* C. *hold a certain Mill in* N. *undivided, and receive the Iſſues thereof coming by equal Portion, and are bound to repair and keep up the ſame Mill, and they the ſaid* B. *and* C. *although they receive their Share of thoſe Profits happening, yet they refuſe to contribute to the Reparation and Support of the ſaid Mill, to the great Damage and Grievance of him the ſaid* A. *as it ſaid: And have there the Summoners*, &c.

C And ſo if a Man have a Houſe adjoining to my Houſe, and he ſuffer his Houſe to lie in Decay, to the Annoyance of my Houſe; I ſhall have a Writ againſt him to repair his Houſe in ſuch Form:

Command A. *that*, &c. *he cauſe to be repaired his certain Houſe in* N. *which* 11 H. 4. 83. *threatens Deſtruction, to the Nuſance of the Freehold of* B. *in the ſame Town, which he ought and hath been uſed to repair, as it is ſaid*, &c. *and unleſs*, &c.

D And ſo if I have a Paſſage over a Bridge, and another ought to repair the Bridge, and he ſuffer the ſame to fall to Decay, I ſhall have a Writ againſt him in this Form:

The King, &c. *Command* A. *that*, &c. *he together with* B. *and* C. *his Partners, cauſe to be repaired the Bridge or a certain Pool in* N. *which he ought to repair with them, as it is ſaid, and unleſs*, &c. or thus, *a certain Bridge, or a*

(*a*) But *Note*; The Judgment on the Admeaſurement, is only to extend between the Parties: for if any other be aggrieved, he ought to bring a new Admeaſurement. 18 *Ed.* 3. *Admeaſurement* 7.

certain Pool which is fallen down, or broken down to the Nuſance of (*a*) *the Freehold of* B. *in the ſame Town, which he ought and hath been uſed to do*, &c. *as it is ſaid*; or thus, *to cauſe to be repaired with* B. *and* C. *his Partners, the Ditches and Walls in* N. *which are fallen down, to the Nuſance of the Freehold of* B. *and* C. *which he ought and hath uſed to repair with them, as it is ſaid*, &c.

E And if any Bridge, Wall or Sewer be broken, unto the Annoyance of the Country, upon a Surmiſe made by any Perſon thereof in Chancery, that certain Perſons ought to repair the ſame, he ſhall have a Writ unto the Sheriff to diſtrain ſuch Perſons to repair the ſame; but it appeareth (*b*) by the Regiſter, that the King ſhall ſend his Commiſſion to the Sheriff to enquire who ought to make ſuch Bridge, and that he diſtrain them to make the ſame, and repair it. But by the Statute of 28 *Ed.* 3. *cap.* 9. (*c*) a Commiſſion ſhall not be made unto the Sheriff to take an Indictment; and the King may ſend unto the Sheriff to diſtrain thoſe Perſons who ought to make or repair ſuch a Way, or Cauſey, or Pavement, and upon it an *Alias* and *Pluries* if it be not done, and an Attachment upon the ſame; and if the Bridge or Way be in the Confines of the County, he ſhall have ſeveral Writs unto every Sheriff to diſtrain them in their Bailiwicks, that they, with the Men in other Counties, ſhall make and repair the Bridges and Ways, *&c.*

F And there is another Writ in the Regiſter in the Title of the Writ of *Ex gravi querela*, thus:

The King to the Mayor and Sheriff of A. *greeting: It is ſhewed unto us on the Behalf of* W. *that whereas he hath a certain Cellar with the Appurtenances in the ſaid Town of* A. *and* I. *hath a certain Cellar with the Appurtenances in the ſame Town, over the Cellar aforeſaid, thrown and broken down to the Nuſance of the Cellar of him the ſaid* W. *and by the aforeſaid* I. *according to the Cuſtom of the ſaid Town ought to be repaired; nevertheleſs he the ſaid* I. *refuſes to repiar that Cellar, as it is ſaid, to the great Damage of him the ſaid* W. *and contrary to the Cuſtom aforeſaid, and becauſe we will not that he the ſaid* W. *be injured in this Matter, we command you, that having called before you the Parties aforeſaid, and having heard their Reaſons ſeverally thereupon, you cauſe due and ſpeedy Complement of Juſtice to be done to him the ſaid* W. *in the Premiſſes, as of Right and according to the Cuſtom*, &c.

And thereupon the Mayor and Sheriffs, or Bailiffs ſhall proceed, and award Proceſs againſt the Parties; and if they will not do it, he may have an *Alias* and *Pluries*, and Attachment againſt the Mayor and Bailiffs.

(*a*) And *Note*; In this Writ the Party recovers his Damages, and it ſhall be awarded that the Defendant repair, and that he be diſtrained to do it. 18 *Ed.* 3. 23. So in this Writ he ſhall have the View; *contra* if it be but an Action on the Caſe for not repairing, for there he ſhall recover but Damages. 7 *H.* 4. 8.

(*b*) On a Commiſſion an Inqueſt was found (and returned into Chancery, and ſent thence into *B. C.*) that the Abbot of *W.* and his Predeceſſors, had repaired the Bridge of *S.*

(*c*) *Note*; It ſeems ſuch Commiſſions were principally to redreſs Nuſances which were within the Precincts of Franchiſes, or Leets of other Lords, and ſo not puniſhable in the Sheriff's Turn. 29 *Ed.* 3. 21.

Writ de Curia claudenda, *and for repairing of Hedges.*

G THE Writ of *Curia claudenda* may be ſued before the Sheriff in the (*a*) County, and then the Writ is ſuch:

The King to the Sheriff, &c. *That you Juſtice* A. *that juſtly*, &c. *he incloſe his Land in* N. *which is open, to the Nuſance of the Freehold of* B. *in the ſame Town, (or in another Town) which he ought and hath uſed to incloſe, as it is ſaid, and which he can reaſonably ſhew he ought to incloſe it, that we may hear no more Clamour for want of Juſtice*, &c.

H And this Writ lieth where one ought for to incloſe his Land from his Neighbour, and will not do it, he ſhall have this Writ; and the Writ may be ſued in the Common Pleas, and then the Writ is ſuch (*b*):

I *The King*, &c. *Command* A. *that juſtly*, &c. *he incloſe his Land in* N. *which is open, to the Nuſance of the Freehold of* B. &c. *which he ought and hath uſed to incloſe, and unleſs*, &c. (*c*)

11 R. 2. Curia claudenda 5. L. 5 Ed. 3. 100. It ought to be in the Debet and Solet, and the Tenant for Life ſhall have the Writ. 2H. 4. 11. L. 5 Ed. 4. 118, 119. A Man ſhall have this Writ before he be damnified. Quia timet. 27 H. 6. Curia claud'. A Nontenure is a good Plea in the Writ.

A And this Writ ſhall be removed out of the County at the Suit of the Plaintiff without Cauſe, and at the Suit of the Defendant he ought to ſhew Cauſe in the Writ, and in the End of the Writ ſhall be this Clauſe: *Let Execution of this Writ be done, if the Cauſe be true, otherwiſe not.*

[128.]

16 H. 7. 9. per Fineux the Judgment is to recover the Incloſure and Damages.

B And the *Curia claudenda* doth not lie but againſt him who (*d*) hath a Cloſe adjoining unto the Plaintiff's Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for Years ſhall not have this Writ, and the View lieth in this Writ (*e*).

22 H. 6 7, 8. 22 Ed 4. Cur' claud'.

C But it ſeemeth that if a Man have Common in a great Waſte to him and his Heirs, or for Life, and he who hath the Land adjoining unto the Waſte and Soil, and who ought to encloſe, enter into the Waſte, and will not make this Encloſure; yet the Commoner ſhall not have this Action for the Damages which he ſuſtaineth, *&c.* although the Commoner may diſtrain the Cattle Damage-feaſant in the Land which is his Common, for the Writ doth ſuppoſe,

39H.6. ib. ac. 13 R. 2. Cur' claud. 3. 12 H. 8. 2. 24 Ed. 3. 4. 15 H. 7. 13. 5 H. 7. 2. 22 H 6. 9.

(*a*) *Note*; A *Curia claudenda* ſhall be brought only in the County where the Lands which ought to be incloſed lie, *per Skipw.* But Caſe ſhall be brought in that County which is damaged by the Noninclosure; and if Iſſue be on the Preſcription, the *Venue* ſhall come *de utroq' Comitatu*, *per Skipw.* 11 *R.* 2. *Action ſur le Caſe* 36, *&c.* and ſee there Caſe for an Incloſure; and *note*, the Writ was *ad Nocumentum*, 29 Ed. 3. 20.

(*b*) See 2 *R.* 2. *Action ſur le Caſe* 36.

(*c*) See 22 *Ed* 4. *Curia claudenda* 2. 1 *H.* 6. 33. 7 *H.* 6. *pl.* 4. 17 *H.* 6. *pl.* 4.

(*d*) *Note*; The Count ſuppoſes that the Lands of the Plaintiff are contiguouſly adjacent to the Cloſe of the Defendant, and this is iſſuable, for none ſhall have this Writ, but he who has the Land next adjoining, by *Newton*, 22 *H.* 6. 8, and 9. and *Moyle contr' Priſot.* See 13 *H.* 7. *Kelw.* 130. 7 *H.* 6. *Cur' claud'* 4. 13 *R.* 2. *pl.* 3. 17 *H.* 6 *pl.* 4.

(*e*) Both for the one and the other's Lands, *&c.* 29 *Ed.* 3. 21.

Ad Nocumentum liberi tent' of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoining, if he have the Action (*a*).

And

(*a*) *Note*; If *A.* be bound to incloſe againſt *B.* and *B.* againſt *C.* and Beaſts eſcape out of the Land of *C.* into the Land of *B.* and thence into the Land of *A.* *A.* ſhall not have Treſpaſs againſt *C.* But if *A.* be bound to incloſe againſt *B.* and the Beaſts of *B.* eſcape into the Lands of *A.* and thence into the Land of one *D.* a Stranger, there *D.* ſhall have Treſpaſs, and *B.* be put to a *Curia claudenda* againſt *A.* and ſo the Books 10 *Ed.* 4. 7. and 36 *H.* 6. *Barr.* 68. are to be reconciled: But it is otherwiſe if Beaſts eſcape in View of the Owner, by Default of Incloſure, as out of a Highway, *&c.* and freſh Suit be ſhewn in Juſtification; but if it does not appear they were in View of the Owner, freſh Suit ſhall not be pleaded in Bar, except the Plaintiff alledges Notice. 15 *H.* 7. 17. 22 *Ed.* 4. 8, 49. 10 *Ed.* 4. 8.

Note as to Incloſure.

1. If Beaſts eſcape into your Land for Default of Incloſure, where you are bound to incloſe, you ſhall have no Advantage thereof on the general Iſſue, but ought to plead in ſpecial. 18 *H.* 8. 6.

2. See the Form of the Plea; *Ought not to have his Action againſt him the ſaid* G. *becauſe he ſays that long before,* &c. *he was ſeiſed of a certain Cloſe in* S. *aforeſaid called* D. *contiguouſly adjoining to the aforeſaid Cloſe of the ſaid* A. *called* C. *in which the Treſpaſs aforeſaid is ſuppoſed to be done, in his Demeſne as of Fee, and that the aforeſaid* A. *and all thoſe whoſe Eſtate he hath in the Cloſe called* C. *aforeſaid, from Time whereof the Memory of Man is not to the contrary, have been uſed to encloſe the ſaid Cloſe, and the Hedges of the ſame Cloſe towards the Cloſe of him the ſaid* G. *ſufficiently to repair and amend, and that before the Time when,* &c. *he the ſaid* G. *put his Beaſts into his ſaid Cloſe to be depaſtured, and becauſe the Hedges between the Cloſe of the aforeſaid* A. *towards the Cloſe of him the aforeſaid* G. *were broken and not repaired, the aforeſaid Beaſts from the ſame Cloſe of the ſaid* G. *for want of ſufficient Reparation of the Hedges of the Cloſe of him the ſaid* A. *at the Time aforeſaid entred,* &c. *And this,* &c. Raſt. Entr. 621. And ſee the ſame Form of Pleading, *int' Sagevill* and *Millard* for a Treſpaſs in the Park of *Cheenye*, where the Plaintiff replied, That he is ſeiſed of a Piece of Land of ſeven Feet *in Longitudine* (*Latitud'*) *&* 20 verge *in Latitudine* (*Longitud'*) lying between the Lands of the ſaid *G.* and thoſe of *C.* and that the Beaſts on the Day of the Treſpaſs, came into his ſaid Piece of Land, and there broke the ſaid Cloſe, *&c. abſque hoc,* that the Defendant's Cloſe is contiguouſly adjacent to the Cloſe of *C.* *modo & forma.* And the other Party ſaid, *it was,* &c. and it was found for the Plaintiff, and twenty Pounds Damages for the Piece of Land, and forty Shillings for the Cloſe; and it was adjudged that the Plaintiff ſhould recover.

Note; It is a good Iſſue to traverſe the Preſcription; for if the Plaintiff be not bound to incloſe (though he has voluntarily incloſed) it will be to no Purpoſe; for if *A.* and *B.* have Lands adjoining, where there is no Incloſure, the one ſhall have Treſpaſs againſt the other, on an Eſcape of their Beaſts reſpectively, *Dyer* 372. *Raſt. Entr.* 621. 20 *Ed.* 4. 10. although wild Dogs, *&c.* drive the Cattle of the one into the Lands of the other; and 22 *H.* 6. 9. and the Writ ſhall be *Quare clauſum fregit,* for it is a Cloſe in Law.

2. If the Defendant pleads that he is ſeiſed in his Demeſne, as of Fee, of the Cloſe of *D.* the Plaintiff may reply, that *J. S.* was ſeiſed, *abſque hoc,* that the Defendant was ſeiſed in his Demeſne as of Fee, and ſo cauſe the preciſe Eſtate to come in Queſtion: But if the Defendant had pleaded generally, that he was ſeiſed of the Cloſe adjoining, or that the Cloſe adjoining was his Freehold; there the Plaintiff ſhall reply, that he had nothing in the Cloſe adjoining at the Time, *&c.* and this ſhall make the Iſſue. *Dyer* 365. Sir *Fra. Leak*'s Caſe.

3. That *ex conſequenti* it follows, none can have Advantage of this Juſtification, but he who claims an Intereſt in the Land adjoining to *D.* *viz.* a Common Path, Highway, Licence, Leaſe, *&c.* and therefore if *A.* be bound to incloſe with *B.* who has a Cloſe adjoining, and the Beaſts of *C.* who has another Cloſe adjoining, eſcape into the Land of *B.* and thence into the Land of *A.* *A.* ſhall have Treſpaſs for this; and ſo held by *Newton,* 21 *H.* 6. 53. 22 *H.* 6. 9. for they were Treſpaſſers to *B.* otherwiſe if *C.* had had Common, or a Way in the Land of *B.* or (as it ſeems to me) if *B.* had been bound to incloſe againſt *C.* 22 *Ed.* 4. *Curia claudenda* 2. adjudged.

4. Hence it follows, that the Iſſue is well joined in the principal Caſe; for the Defendant had

D And the Proceſs in this Writ is Summons, Attachment and Diſtreſs, and if 22 Ed. 4.
he do appear and afterwards make Default, he ſhall have a *Diſtringas* in the Iſſue 127.
Place of a *Petit Cape*, *&c.* And if he make Default at the Day of the Return 10 Ed. 4. 7.
of that Writ, he ſhall have a Writ to enquire of Damages, and alſo a Writ to 13 R. 2. Cur' claud' 3.
E diſtrain him to make the Reparations, *&c.* And in this Writ in his Count he 29 H. 6.
ought to ſhew the Certainty of the Land which the Plaintiff hath adjoining 38 Dyer.
unto the Defendant, and the Certainty of the Land which the Defendant hath
there adjoining which he ought to encloſe. And to alledge a Preſcription of
the Encloſure, *&c.* as appeareth in the Count of the Book of Entries, *fol.* 32.
So it is holden 22 *H.* 6. for if it be by Indenture or Compoſition, then he
ſhall be put to his Writ of Covenant.

Writ of Quo Jure.

F THE Writ of *Quo Jure*, where a Man hath Lands in Fee, and another claimeth Common in that Land, he who owneth that Land ſhall have this Writ againſt that Commoner who claimeth the Common, and the Writ is ſuch:

7 H. 4. 12. It is a good Plea to ſay, That he hath nothing in the Lands in which he claimeth Common.

G *The King to the Sheriff*, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. *that he be*, &c. *to ſhew by what Right he demands Common of Paſture in the Land of him the ſaid* A. *as the ſaid* A. *hath no Common in the Land of him the ſaid* B. (*a*) *neither doth the ſaid* B. *Service to him for which he ought to have Common in the Land of him the ſaid* A. *as it is ſaid: And have there*, &c.

H And this Writ lieth for the Lord of a Town, or of a Waſte, or for any other Tenant who claimeth Common in his Land; although he be not Lord of the Waſte, nor the Town.

I And this Writ is a Writ of Right in its Nature, for when the Plaintiff hath declared in this Writ, the Tenant ſhall make Defence and ſet out his Title to the Common, (*b*) and alledge Seiſin thereof, and the Eſplees, *And that ſuch is his Right he offers*, &c. as the Demandant ſhall do in a Writ of Right; and then the Plaintiff in the *Quo Jure* ſhall make Defence, and deny the Seiſin alledged by the Defendant, and join the Miſe upon the meer Right, or by Battail, and ſee the Count and the Form of Pleading in a *Quo jure*, *Lib. Ent.* 96 and 80.

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had not the Cloſe *immediate*; ſo his Beaſts did Wrong, when they entred into the Piece of Land out of the Park: and therefore, if *A.* be bound to incloſe againſt *B.* who has twenty Acres adjoining, and *A.* purchaſes one Acre contiguouſly adjacent to the Incloſure, *A.* ſhall not be compelled to incloſe. If *A.* has a Cloſe which he uſed to incloſe, and afterwards has an Acre of Land contiguouſly adjoining, and then lets out his Incloſure, with Limits, *&c.* Yet he that has the Land adjoining, ſhall not juſtify for Default of Incloſure. Theſe Points are reſolved, 21 *H.* 6. 3. 22 *H.* 6. 8.

(*a*) Yet *Note*; A Lord may have Common appendant to his Demeſnes in the Lands of his Tenant. 18 *Ed.* 3. 43.

(*b*) So that herein the Defendant is Actor or Proſecutor, and therefore it is held by ſome, that he ſhall not have Aid on his Title. 9 *H.* 6. 56.

And in a *Quo Jure* brought by two, Summons and Severance lieth, and K the Nonſuit of the one ſhall not be the Nonſuit of the other. And this *Quo Jure* lieth againſt ſeveral Tenants, as it appeareth, *H.* 24 *H.* 3. But in that Caſe they ſhall, it ſeemeth, make ſeveral Defences, and make ſeveral Titles, and join the *Miſe* ſeverally. And the View ſhall be granted in this Writ. And the Proceſs in this Writ is Summons, Attachment and Diſtreſs, and after Appearance if the Defendant make Default, a grand Diſtreſs ſhall iſſue L out in the Place of *Petit Cape*, *&c.*

Poſt. 133.

Writ de Rationabilibus Diviſis.

THE Writ *de Rationabilibus Diviſis*, is in its Nature a Writ of Right; M and lieth properly where two Men have Lands in divers Towns or Hamlets, ſo that the one is ſeiſed of the Land in one Town or Hamlet, and the other of the Land in the other Town or Hamlet by himſelf; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; then to ſet the Bounds in certain, this Writ lieth for the one againſt the other; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *We command you, that juſtly and without Delay*, N *you cauſe reaſonable Bounds to be ſet between the Land of* A. *of* B. *in* C. *and the Land of* D. *of* E. *in* F. *as there ought and have been uſed to be, whereupon he the ſaid* A. *complains, that the aforeſaid* D. *draws more thereof to his Fee than belongs to him to have*, &c. *Witneſs*, &c.

And this Writ lieth for Tenant in Fee-ſimple, and againſt Tenant for Life, O and in this Writ the Tenant for Life ſhall have Aid of him in the Reverſion, and they may join the Miſe in this Writ, and it ſhall be tried by the Grand Aſſiſe, as other Writs of Right ſhall be. 12 Ed. 3. 24 Ed. 3.

And this Writ is *Vicontiel*, and may be determined by the Sheriff: For the P Plaintiff in this Writ ſhall make his Plaint before the Sheriff in Nature of a Count, and upon the ſame the Sheriff ſhall make a Precept to warn the Defendant, and when he cometh the Plaintiff ſhall count, and the Defendant ſhall anſwer the ſame in the Count, *&c.* and if he deny it, then the Sheriff ſhall make the Diviſion and Partition of the Land between them by certain Metes and Bounds.

But if the Defendant will plead, and join the Miſe upon the mere Right, Q and put himſelf upon the Grand Aſſiſe, then the Plaintiff ought to remove the ſame by a *Pone*, without Cauſe, and the Defendant may remove it with Cauſe, as it is ſaid in other Writs. And the Count in this Writ is in this Form: See 129. B.

And the ſame A. *now comes and ſays, that whereas reaſonable and right Bounds* R *ought to be between the Land of the aforeſaid* N. *&c. in* S. *and the Land of him the ſaid* A. *in* B. *the Bounds aforeſaid beginning towards the North in a certain Place called* K. *and ſo directly towards the South in length by* L. *unto* E. *beyond which Bounds the aforeſaid* N. *&c. ought to have nothing towards the Weſt, he the ſaid* N. *&c. beyond the Bounds aforeſaid, hath drawn to his Fee in* S. *of the Land of him the ſaid* A. *three hundred Acres of Moor and Paſture*, &c. *whereof*

he the ſaid A. *ſays that one* W. *his late Father, was ſeiſed of his Demeſne as of* [129.]
Fee, by divers Metes and Bounds, in Time of Peace in the Time of, &c. *by taking*
the Profits thereof to the Value, &c. *and that ſuch is his Right, he offers,* &c.
And the Tenant may join the Miſe by Battail or by Grand Aſſiſe, *&c.*

A And divers Tenants in Common of a Town or Hamlet may have this Action againſt him who is Tenant of another Town adjoining, and they ſhall count one Count, and ſhall make their ſeveral Titles in that Count, and ſhall alledge the Eſplees ſeverally in the ſame Count. Which ſee in the Book of *Entries, fol.* 167.

B And the Defendant ſhall make his Defence ſeveral againſt every one of
them, or may wage Battail, or join the Miſe at his Pleaſure, and then the Plain-
tiffs ſhall reply thereunto and recite anew their Count, and alledge the Eſplees,
as before, and then join to the Miſe with the Tenant upon the mere Right, or
C by Battail at the Pleaſure of the Tenant. And if they do join the Miſe in the
County before the Sheriff, by Battail, it ſhall be determined there, but not by
the Grand Aſſiſe, *&c.* And it ſeemeth, that Tenant in Tail, nor a Parſon of
a Church, nor Tenant for Life ſhall not have this Writ, for he ought to have
an Eſtate in Fee who maintaineth this Writ, and Summons and Severance
D lieth in this Writ, and the View ſhall be granted in this Writ. And Join-
E tenancy or Coparcenary is a good Plea in this Writ, and the Writ may be
brought againſt ſeveral Tenants, who have Tenements in Severalty or in com-
mon in the other Town.

See 128. Q.

Writ Ex parte talis.

F THE Writ of *Ex parte talis* lieth where Auditors are aſſigned unto a Bailiff or Receiver to account, and the Auditors will not allow unto the Bailiff or Receiver his (*a*) reaſonable Allowances, which they ought to do, but commit him to Priſon; he who is ſo impriſoned ſhall have this Writ *Ex parte talis, &c.* But if a Man brings a Writ of Account, and Auditors are aſſigned unto him who is Bailiff or Receiver, to take his Account, and they will not allow him his Allowances which they ought to do, *&c.* he ſhall not have this Writ of *Ex parte talis*, nor any other Remedy in that Caſe, for he may ſhew the ſame to the Juſtices, and they ſhall relieve him.

Note 13 R. 2. Fitz. Account 51. upon this Writ of Ex parte talis, the Barons of the Exchequer uſe to allow an Averm. that the Plaintiff in the Writ hath paid the Money by the Commandment of the Owner, or ſuch ſpecial Matter without Writing or Tally of the ſame.

G And if a Plea of Account be ſued in *London* againſt a Receiver, *&c.* or in other Court of Record, and the Party appear, and Auditors are aſſigned him by the Court, and they will not allow unto him ſuch Allowances which he thinketh they ought to do; he ſhall have a Writ of *Ex parte talis*; and the Writ is ſuch:

(*a*) *Note*; Payment to the Plaintiff, or to another by his Command, ought to be allowed, although the Accountant has no Tally or Writing of the ſame. 13 *R.* 2. *Account* 51. *ſed contr'* 6 *R.* 2. *ibid.* 47. *per Belkn.*

The King, &c. *It is ſhewed unto us, on the Behalf of* A. *(taken and detained in our Priſon of* Lincoln *for Arrears of his Account, in which* B. *affirms him to be bound to him for the Time wherein he was his Bailiff in* N.) *that the Auditors of the ſaid Account deputed by him the ſaid* B. *for this Purpoſe, have unduly aggrieved him the ſaid* A. *upon the ſame Account, by charging him with Receipts which he hath not received*, or *by not allowing to him Expences and Diſcharges reaſonable, to the great Damage and Grievance of him the ſaid* A. *And becauſe we will not that the ſaid* A. *be injured in this Behalf, we command you, that if the aforeſaid* A. *by the Teſtimony of the Auditors of the Accounts, ſhall be delivered, and ſhall find you ſufficient Bail to have him before our Treaſurer and Barons in our Exchequer to render to the aforeſaid* B. *his Account, according to the Form of the Statute thereof provided by the Common Council of our Realm, then that you cauſe him the ſaid* A. *to be delivered by the Bail aforeſaid out of the Priſon aforeſaid, if he be detained in the ſame on that Occaſion, and no other, and give Notice to the aforeſaid* B. *that he be then there with the Rolls and Tallies, by which the aforeſaid* A. *his Account before rendered, to do and receive in the Premiſſes what of Right and according to the Form of the Statute aforeſaid ought to be thereupon done: And have there the Names of thoſe Bail and this Writ. Witneſs*, &c. *Vide Stat. inde Weſtm.* 2. *cap.* 11.

And this Writ ſhall be returnable before the Treaſurer and Barons of the H Exchequer at a certain Day, as it appeareth by the Writ.

And if a Man have Auditors aſſigned him in *London* by the Party who ta- I keth the Account, and will not allow his Tallies or other Things to be allowed, but commit him to Priſon, and becauſe he is a Stranger in the City, he cannot find Sureties to bail him to ſue his Writ of *Ex parte talis*, *&c.* Then he may ſend unto the Chancellor, and ſurmiſe in the Chancery, and put in Sureties before the King there, and thereupon he ſhall have a Writ unto the Sheriff of *London* out of the Chancery, rehearſing the Matter, and how that he hath found Sureties there, according to the Statute, commanding the Sheriff to deliver him out of Priſon and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *It is ſhewed unto us on the Behalf of* A. (as above, until) *to the great Damage and Grievance of him the ſaid* A. *And becauſe the ſame* A. *is a Foreigner in our City of* London *and unknown, wherefore he cannot find Perſons of the ſaid City to be bail, to have him before our Treaſurer and Barons of the Exchequer to render his Account aforeſaid, and farther to do and receive that which our Court ſhall conſider in the Premiſſes; and you have refuſed to admit other Perſons Bail for him the ſaid* A. *than of the City, and the ſame* A. *hath found ſufficient Bail before us in our Chancery, to wit*, C. D. *and* E. *of the County of* York, *who have become Bail to have him before our Treaſurer (or his Deputy) and Barons of the Exchequer in fifteen Days of* Eaſter *next coming, to review there his ſaid Account, and to ſtand to the Right in the Pre-* [130.] *miſſes, according to the Form of the Statute thereupon provided by the Common Council of our Realm; We command you in the mean time, that you cauſe him the ſaid* A. *to be delivered by the Bail abovesaid out of the Priſon aforeſaid, if he be detained in the ſame on that Occaſion, and no other: And give Notice to the ſaid* B. *that he be then there with the Rolls and Tallies by which the aforeſaid* A. *his Account before rendered as aforeſaid, and to do and receive what ſhall be juſt and conſonant to Reaſon: And have there this Writ*, &c.

And

A And if he do remain in Priſon, he may ſue the *Ex parte talis* returnable before the Treaſurer and Barons of the Exchequer, and thereupon he may have another Writ out of Chancery directed unto the Treaſurer and Barons of the Exchequer, that they take Sureties of him who is in Priſon according unto the Form of the Statute; and that they deliver him out of Priſon, and ſhall have another Writ unto the Gaoler, that he ſend his Body before the Treaſurer and Barons of the Exchequer, and that he deliver the Body when the Treaſurer and Barons ſend him a Writ ſo to do, *&c.* which Writ appeareth in the Regiſter.

B (*a*) And if a Man be committed to Priſon by Auditors for Arrearages of his Account, and afterwards eſcape out of Priſon, the Gaoler ſhall ſatisfy the Party at whoſe Suit he was committed, and the Gaoler ſhall have a ſpecial Action upon the Caſe upon the Priſoner to anſwer the Eſcape and the Damages which the Gaoler hath ſuſtained, which Writ is among the Writs of *Ex parte talis* in the Regiſter; but it ſeems reaſonable that the Gaoler may take the Party again, and ſo is the Opinion of ſome Books.

13 H. 7. 2. V. 6 H. 7. 11. & 12. 10 H. 7. 25. 13 Ed. 4. 9. 14 H. 7. Stamf. 33.

Writ of Execution upon a Statute-merchant.

C A Writ of Execution upon a Statute-merchant lieth in Caſe, where a Man is bounden in a Statute-merchant before any Mayor or Bailiff of a Corporate Town, who have Power to take ſuch Bonds or Recognizances, to pay a certain Sum of Money at a Day, at which Day he doth not pay the ſame, then he to whom the Obligation or Recognizance is made, may come before the Mayor, or him before whom the Bond or Recognizance was taken, and pray him to certify the ſame into the Chancery under his Seal, according unto the Statute of *Acton Burnel*; and if he will not certify the ſame as he ought to do, then the Recognizee may have ſuch Writ directed unto the Mayor:

But if a Statute merchant be acknowledged to one who is abſent, it ſhall not bind the Commiſſion, if it be not delivered to the Commiſee, as it ſeemeth by 20 Ed. 3. Fitz. Account 79.

The King to his beloved the Mayor of Lincoln, *and to* T. *Clerk deputed to take Recognizance of Debts at* L. *greeting: It is ſhewed unto us on the Behalf of* I. *that whereas* R. *in the tenth Year of our Reign, before* W. *late Mayor of the City of* Lincoln, *and* H. *Clerk deputed to take Recognizances in the ſame City, acknowledged himſelf to owe to the aforeſaid* I. *twenty-four Pounds, according to the Statute for Merchants heretofore ſet forth at* Acton Burnel, *to be paid at certain Times; and although the Times of Payment are long ſince paſt, and he the ſaid* I. *hath often requeſted you, that you would certify us in our Chancery of the Recognizance aforeſaid, according to the Form of the Statute aforeſaid, and yet you have hitherto deferred, and ſtill defer to certify us in our Chancery aforeſaid upon the Recognizance aforeſaid, whereupon we very much wonder; We command you, that having ſearched the Rolls of ſuch Recognizance made before the ſaid* W. *and* H. *in the Year aforeſaid, being in your Cuſtody, as it is ſaid, if you ſhall find the ſaid Recognizance to have been made in Form aforeſaid, and the Times of*

(*a*) And *Note*, That in this Caſe, although an *Ex parte talis* be ſued by the Party who eſcapes, yet the Action lies againſt the Bailiff. 13 *Ed.* 3. *Barr.* 253.

Payment aforeſaid to be paſt, and that we have not been otherwiſe certified thereof in our Chancery, then that you certify us in our ſame Chancery upon the Recognizance aforeſaid diſtinctly and openly, according to the Statute aforeſaid, under the Seal there appointed for Recognizances of Merchants, that we may cauſe further to be done hereupon that which ought to be done, according to the Form of the Statute aforeſaid.

And if he will not certify by this Writ, he may ſue an *Alias* and a *Pluries* D
and Attachment againſt the Mayor and Clerk; and it appeareth by this Writ,
that if an Obligation be once certified in the Chancery, it ought not to be
certified again without Affidavit made, that Execution was not ſued upon it,
and then he ſhall have a ſpecial Writ unto the Mayor for it; for then it ſhall
be taken as a ſeveral Obligation upon every Certificate.

And alſo it ought to be certified under the Seal of him who is deputed to E
ſeal the Obligation. And if the Mayor do make his Certificate unto the F
Chancery, then the Party ſhall have a Writ to execute the Statute, thus:

The King to the Sheriff of Lincoln, *greeting: Becauſe* A. *of* B. *before* C. *and* C. *Clerks deputed to take Recognizances of Debts at* L. or thus, *before* D. *Mayor*; or thus, *before* L. *lately Mayor of our City of* Lincoln, *and* F. *Clerk*, or, *then Clerk deputed to take Recognizances of Debts at* L. *acknowledged himſelf to owe to* E. *ten Pounds, which he ought to have paid to him at the Feaſt of*, &c. *and hath not yet paid the ſame to him, as it is ſaid; We command you, that you take the Body of the aforeſaid* A. *if he be a Layman, and cauſe him to be kept ſafely in our Priſon, until he ſhall fully ſatisfy the ſaid* E. *of the Debt aforeſaid*, (or, *ſhall fully ſatisfy the Executor of the Teſtament of the aforeſaid* E. *of the aforeſaid ten Pounds) and that you make known to us in what Manner you ſhall have executed this our Precept on the Octave of Saint* Hilary, *whereſoever*, &c. *by your Letters ſealed: And have*, &c. (*a*).

And this Writ may be returned as well into the Common Pleas as King's G
[131.] Bench. And if a Man make a Statute-merchant of one hundred Pounds H
payable at divers Days, if he fail of Payment at any of the ſaid Days, the
6 Ed. 3. 29. Recognizee ſhall ſue Execution at that Day, and ſhall not ſtay his Execution
until all the Days are paſt, as he ſhall do of an Obligation.

Contrary in Covenant; or if he aſſent to pay, by 5 Ma. 107.
(*b*) If a Man be bound to pay twenty Pounds at divers Days, he ſhall not A
have an Action of Debt upon the Bond, until all the Days are paſt. But if
he who is bounden in a Statute-merchant be a Clerk or Abbot, *&c.* then the
Writ of Execution is of another Form, *viz.*

32 H. 6. cont. 14 H. 8. 14. Brudenell.
The King, &c. *Becauſe* A. *Parſon of the Church of* B. *before*, &c. *We command you, that without Delay you levy the aforeſaid ten Pounds of the moveable Goods and Chattels of him the ſaid* A. *in your Bailiwick*, &c. *and that you make known to us in what Manner*, &c.

(*a*) And if on this Writ the Sheriff returns the Party dead, or *non eſt inventus*, a Writ ſhall iſſue to extend the Lands. But on a Statute-Staple certified, the Conuſee ſhall have the Body, Goods and Lands by one Writ, 15 *H* 7. 14. And *Note*, by 29 *Ed.* 3. 1. it appears, that the Repriſes of the Land (whereout the Conuſee had Rent of twenty Pounds iſſuing) was of greater Value than the Extent; and yet it was intended that the Lands were taken and delivered, though it was impoſſible to levy the Debt on that Extent. And *Note*; The Sheriff made a Delivery accordingly on the *Liberate*; yet on the Return thereof Judgment is rendred, *Quod teneat quouſq' levaverit*, *&c.*

(*b*) *Poſt.* 167. 13 *H.* 4. *F. Chancery* 140. *per Hill.*

For a Clerk ſhall not be arreſted by his Body upon that Statute, and if Proceſs be awarded to arreſt him, by that Statute he ſhall have a Writ unto the Sheriff, that he do not trouble or moleſt him, and if he have arreſted him for the ſame, that he deliver him, if he know no Cauſe why he ſhould not enjoy the Privilege of a Clerk: And in ſome ſuch Writ there is a Proviſo put in the End of the Writ, thus:

Provided, that if the aforeſaid ten Pounds have not been levied upon the Lands, Goods and Chattels of him the ſaid A. *they may be levied, according to the Form of the Statute aforeſaid, as is juſt,* &c. *Witneſs,* &c.

B (*a*) If a Man be bounden in a Statute-merchant in twenty Pounds, and the Statute at the Suit of the Recognizee is certified in the Chancery, and afterwards he dieth, his Executors may have a ſpecial Writ unto the Mayor, reciting the Certificate before them, commanding them to certify the ſame again into the Chancery, and the Writ is ſuch:

L. *and* W. *Executors of the Teſtament of* L. *of* B. *have ſhewed unto us, that whereas* R. *&c.* (as above in fo. 303. until) *according to the Form of the Statute aforeſaid: Nevertheleſs you have not cared to do any thing thereupon, becauſe that by your Rolls you have found that our Chancery hath been heretofore certified of the ſame Recognizance: And the aforeſaid Executors appointed have perſonally aſſerted before us in our Chancery, that no Execution of the Recognizance aforeſaid in any wiſe hath been done in the Life of him the ſaid* L. *or after his Death, by virtue of the Certificate thereof before made in Chancery, and have beſought us, that we will provide for them a Remedy in this Behalf: And becauſe we will help thoſe Executors as far as we juſtly can in this Behalf, we command you, that having ſearched your Rolls concerning ſuch Recognizance, if you ſhall find that Recognizance to have been made in Form aforeſaid, and that the Times of Payment are paſt, as it is ſaid, then that you certify us in our Chancery upon the Recognizance aforeſaid diſtinctly and openly, under your Seals there appointed for Recognizances of Debts, as the Cuſtom is, notwithſtanding our Chancery is before certified thereof. Witneſs,* &c.

A But this Writ is not granted but upon Affidavit and Oath made by the Executors in Chancery, or by him who would have that Execution.

(*b*) *Writ of Execution upon a Statute-ſtaple.*

AND if a Man be bounden before the Mayor of the Staple in a certain Sum, to pay at a certain Day, *&c.* and he do not pay it according to the Statute; then he to whom the Obligation is made ſhall come before the Mayor and ſhew him the Statute, and pray him to certify it under the Seal into the Chancery, as he ſhall do upon a Statute-merchant. Or the Mayor may award Execution, if the Party be dwelling within his Juriſdiction, or

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(*a*) So *Note*; Executors cannot proceed on the old Certificate, *viz.* to commence where the Teſtator left off, but they muſt begin again *de novo.* See *Dyer* 180. 17 *Ed.* 3. 31. 18 *Ed.* 3. 10. 28 *Ed.* 3. 91. 25 *Ed.* 3. 38. 36 *H.* 8. *Bro. Stat. Merch.* 43. 17 *Ed.* 3. 31. *in principio.*

(*b*) *Note*; Execution by a Mayor of the Staple, can be only within his Juriſdiction.

V. 45 Ed. 3 22. Finchd. Execution ſhall be ſued firſt of the Goods, and then of the Lands. But 7 R. 2. Execution 46. the Party hath his Election to take one or the other, and ſo is the Uſe at this Day.

have Lands or Goods there, *&c.* And if the Mayor will not certify at the Requeſt of the Party, then he ſhall have a Writ out of the Chancery unto the Mayor to certify the ſame, as he ſhall have upon a Statute-merchant ſhewed in Chancery; and upon the ſame an *Alias* and a *Pluries*, and Attachment againſt the Mayor, if need be; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution ſhall iſſue forth againſt the Party to arreſt him, and to extend his Lands, *&c.* and this Writ ſhall be always returnable in the Chancery, and not in the King's Bench nor Common Pleas, as the Writ which iſſueth forth to do Execution upon a Statute-merchant; and the Form of the Writ is ſuch:

The King to the Sheriff of Lincoln, *greeting: Becauſe* R. *of* W. *on the 20th Day of* September *in the Year*, &c. *before* E. *of* B. *Mayor of our Staple of* B. *deputed to take Recognizance of Debts in the ſame Staple, acknowledged himſelf to owe to* W. *of* F. *eight Pounds*, &c. *which he ought to have paid to him on the Feaſt of*, &c. *then*, &c. *And which he hath not yet paid to him, as it is ſaid; We command you, that you take the Body of the aforeſaid* R. *if he be a Layman, and keep him ſafely in our Priſon, until he ſhall fully ſatisfy the ſaid* W. *of the Debt aforeſaid, and that you diligently cauſe to be extended and appraiſed, and ſeized into our Hand, all the Lands and Chattels of him the ſaid* R. *in your Bailiwick, by the Oath of honeſt and lawful Men of the ſaid Bailiwick, whereby the Truth of the Matter may be better known, according to the true Value thereof; and cauſe them to be delivered to the aforeſaid* W. *until he ſhall be ſatisfied of the Debt aforeſaid, according to the Form of the Ordinance thereof made: And that in what Manner you ſhall have executed this our Precept, you make known to us in our Chancery on the Morrow of All Souls next coming, whereſoever we ſhall then be*, &c. *by your Letters ſealed: And have there this Writ*, &c.

And by this Writ it appeareth, that the Sheriff may arreſt the Conuſor, and extend and take his Lands, Goods and Chattels, and return the ſame Extent in Chancery, *&c.* And thereupon the Conuſee may ſue a Writ unto the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt; which Writ is called *Liberate*, and is ſuch:

[132.] *The King to the Sheriff*, &c. *Whereas* R. *of* W. *on the 20th Day* (as above, until) *by your Letters ſealed*; (and then thus:) *And you have returned to us, that the aforeſaid* R. *was not found in your Bailiwick after our Writ was delivered to you, but that you have taken into our Hands all the Lands and Tenements and Chattels of him the ſaid* R. *in your ſaid Bailiwick, and have cauſed them to be extended and appraiſed according to the Tenor of our ſaid Writ; to wit, two Parts of one Meſſuage, which are appraiſed at five Pounds*, &c. *We command you, that you deliver to the ſame* A. *all the Lands and Tenements and Chattels aforeſaid by you ſo taken into our Hands, if he will have them by the Extent and Appraiſement aforeſaid, to have them according to the Form of the Ordinance aforeſaid, until he ſhall be ſatisfied of his Debt aforeſaid: And that in what Manner you ſhall have executed this our Precept, you make known to us in our Chancery in fifteen Days of* Eaſter, *whereſoever we ſhall then be*, &c. *by your Letters*, &c. *And have*, &c.

And if a Man be bounden before the Mayor of the Staple, or in a Statute-merchant before another Mayor, *&c.* and have no Lands but in *Durham*, or other County Palatine, then upon the Certificate of the Statute made by the A

Mayor, *&c.* upon the Return of the Sheriff, that he hath not Lands nor Tenements within his Bailiwick, the Party may ſurmiſe that he hath not any Thing but in the County Palatine, *&c.* and pray that the Tenor of the Record may be ſent thither, to have Execution done, and upon that Surmiſe he ſhall have ſuch Writ. 2 Ed. 4. 10.

Writ to do Execution in a County Palatine.

THE *King to the venerable Father in Chriſt* I. *by the ſame Grace Biſhop of* Durham, *or to his Chancellor in the Biſhoprick aforeſaid, greeting,* &c. *By the Tenor of a certain Statute of the Staple, made before* W. *of* W. *lately Mayor of the Staple of* Weſtminſter, *deputed to take Recognizances of Debts in the ſame Staple, of forty Pounds to* T. *of* W. *lately deceaſed, as it is ſaid, and to* E. *of* R. *Citizen of* London, *lately acknowledged by* Agnes, *who was the Wife of* H. *of* R. *of the Biſhoprick of* Durham, *and ſent into our Chancery by* N. B. *now Mayor of the ſaid Staple: We ſend to you incloſed in theſe Preſents, that having inſpected the Tenor aforeſaid, you further cauſe Execution of the Recognizance aforeſaid to be done at the Proſecution of* Catherine, *who was the Wife of the aforeſaid* T. I. F. *and* R. *of* L. *Executors of the Teſtament of the aforeſaid* T. *as of Right and according to the Law and Cuſtom of the Kingdom of* England *ſhall be done. Witneſs,* &c.

B And if the Statute be not ſufficiently certified in the Chancery by the Mayor, *&c.* becauſe he hath omitted any Part of the Bond, as the Name or Surname, or other Matter material, then upon Affidavit made, that he hath not had Execution by reaſon of that Certificate, he ſhall have a new Writ unto the Mayor and Clerk, *&c.* to certify the Statute fully again into the Chancery, notwithſtanding his Certificate made before, and that Writ doth appear in the Regiſter.

Note, 2 R. 3. 7. 3 ſeveral Certificates were made upon one Statute. But it cannot be intended that they were three ſeveral Statutes. And note, That ſeveral Writs were awarded upon them to ſeveral Sheriffs.

If the Mayor doth make a Certificate of the Statute into the Chancery, and deliver the ſame unto the Recognizee, and the Party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the Party ought to have a new Certificate to that Chancellor, otherwiſe he ſhall not have Execution of the Statute upon that Certificate made to the old Chancellor, which was not delivered in Time into the Chancery: And then he ought to ſue a Writ in Chancery directed unto the Mayor, to make a new Certificate; and the Writ ſhall be ſuch:

The King to the Mayor of the Staple of Weſtminſter *deputed to take Recognizances of Debts in the ſame Staple, greeting: It is ſhewed unto us, on the Behalf of* D. *&c. that whereas* W. *of* E. *&c. in the third Year of our Reign, before you in the Staple aforeſaid, acknowledged himſelf to owe to the aforeſaid* D. *forty Pounds, to be paid at a certain Time, according to the Form of the Statute-ſtaple aforeſaid; and although you have certified under the Seal of your Office, as the Cuſtom is, to* R. *Biſhop of* London, *lately our Chancellor, while he continued in the Office of Chancellor, that the ſaid Time of Payment is paſt, yet, becauſe the aforeſaid* D. *hath hitherto kept the ſaid Certificate in his own Cuſtody, and the aforeſaid* R. *lately Chancellor, to whom by Name you before certified thereof, was long ſince and now is diſcharged from his Office of Chancellor; We will, and command*

mand you, that the ſaid Certificate, by you ſo made to the aforeſaid late Chancellor, being truly and wholly reſtored to you, and you having ſearched the Rolls of ſuch Recognizances made before you in the Year aforeſaid, if you ſhall find that the Recognizance aforeſaid was made, then that without Delay you certify to our Chancellor that now is, in the ſame Chancery, upon the Recognizance aforeſaid diſtinctly and openly, according to the Form of the Statute aforeſaid, under the Seal appointed for Recognizances of the Staple aforeſaid, that we may further cauſe to be done hereupon that which, according to the Statute aforeſaid, ſhall be done, the ſaid Certificate ſo before made notwithſtanding. Witneſs, &c.

But note, That if in the firſt Certificate he hath not expreſſed the Name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and ſue Execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his Name.

Recognizance in the County before the Sheriff.

IF a Man doth acknowledge in the County before the Sheriff to pay to another a certain Sum of Money at a Day certain, and do not pay it at the
[133.] Day, then the Recognizee ſhall have Writ out of the Chancery unto the Sheriff, commanding him to do Execution upon that Recognizance; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. A. *hath ſhewed unto us, that whereas he impleaded* B. *in your County by our Writ, and he the ſame* B. *in that full County acknowledged himſelf to owe to the aforeſaid* A. *certain Money to be rendered at a certain Time, you, notwithſtanding that Time is paſt, have not yet cauſed the ſame Money to be paid to him the ſaid* A. *upon his Complaint according to his Recognizance, to the great Damage and Grievance of him the ſaid* A. *And becauſe we are willing to relieve the ſame* A. *in this Behalf as it ſhall be juſt, we command you, if it is ſo, that then you levy that Money of the Goods and Chattels of him the ſaid* B. *in your Bailiwick, and cauſe the ſaid* A. *to have the ſame without Delay, that repeated Clamour thereupon may not come to us. Witneſs,* &c.

Bro. Recog. 16. Ant. 132. But it ſeemeth Recognizance ſhall be made when a Plea is depending in the A
County before the Sheriff by Writ between the Parties in Debt, *&c.* but if there be not any Plea depending in the County by Writ, but by Plaint, *quære* if that Recognizance ſhall be made; and it ſeemeth reaſonable that it may be taken, as well when the Plea of Debt is depending in the County before the Sheriff by Plaint, as if it were by the King's Writ.

But if a Man come into the County before the Sheriff, and there in Court acknowledge to pay a certain Sum of Money unto another at a certain Day, *&c.* where there is not any Plaint or Action depending betwixt the Parties, whether this Acknowledgment ſhall be good or not, *quære*. And it ſeems reaſonable, that if it be under the Sum of forty Shillings, that ſuch Acknowledgment ſhall be good, and bind the Party.

And if the Party have a Writ to the Sheriff to do Execution of ſuch Re- B
cognizee (as before is ſaid) and the Sheriff will not do the ſame, then the Recognizee may ſue an *Alias* and a *Pluries*, and Attachment againſt the Sheriff; and the Form of the Writ is ſuch:

The King, &c. *We have received Information on the Behalf of* A. *that whereas we lately commanded you, that if* B. *ſhould acknowledge himſelf to owe to* A. *(ſo much) then you ſhould diſtrain him the ſaid* B. *to render the ſaid Debt to the ſame* A. *without Delay; and although the ſaid* B. *hath before you acknowledged himſelf to owe to the aforeſaid* A. *the Debt aforeſaid, yet you have hitherto delayed, and ſtill do delay to diſtrain him the ſaid* B. *to render that Debt, to the great Damage and Grievance of him the ſaid* A. *And therefore we command you, if ſo it is, that then you cauſe Execution of the Recognizance to be done without Delay, according to the Tenor of our Command aforeſaid, and that you in no wiſe omit this. Witneſs*, &c.

But it ſeemeth by this Writ, that if the Recognizor will not again acknowledge the Debt before the Sheriff, when he cometh to him to do Execution, *&c.* but ſay that he hath paid the ſame, that then the Sheriff ought not to do Execution.

And there is another Writ in this Form:

The King to the Sheriff, &c. *We command you, that if* A. *hath acknowledged himſelf to owe to* B. *one hundred Shillings, then diſtrain him the ſaid* A. *to render the Debt aforeſaid to him the ſaid* B. *&c.*

And he may have an *Alias* and a *Pluries*, and *Attachment* upon the ſame, *&c.* And if the Sheriff return upon the *Alias*, *That he hath diſtrained the Party by Corn or other Chattels, for which he hath not found Buyers*; then by the Title of the Regiſter ſhall be awarded a Writ of *Pluries reiterando* returnable, *& illud inſuffic' reputand'*, *&c.* But *quære tamen* of that; for it ſeemeth to be a good Return: And *quære* if the Sheriff may ſell the Goods to pay the Recognizance, for it ſeemeth by the Regiſter he may ſell the Party's Goods.

C And if a Man be in Execution upon a Statute-Merchant, he ought to be found in Priſon for the Rent and Revenues of his Lands which are in Execution, *&c.* that is to ſay, with Bread and Water, as appeareth by the Statute; and if he have not the ſame, he may ſue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the Livelihood which the Statute giveth him; and the Writ is ſuch: Ant. 131. Suſtena. of the Cogniſor.

The King to the Mayor and Sheriffs of London, *greeting: Whereas it is contained in the Statute ſet forth of Merchants, that Merchants, for whoſe Debts it ſhall happen that their Debtors are arreſted and impriſoned according to the Form of the Statute aforeſaid, are bound to find for thoſe Debtors remaining in Priſon Bread and Water for their Suſtenance; We command you, that you cauſe to be done in this Caſe to* W. *of* S. *arreſted and detained in our Priſon for a Debt to* E. *of* K. *by Form of our Statute aforeſaid, as it is ſaid, if he be detained in the ſame upon that and no other Occaſion, that which ought to be done, and in the like Caſe hath been uſed to be done, according to the Form of the Statute aforeſaid. Witneſs*, &c. And upon that he may have an *Alias*, *Pluries* and *Attachment*.

Writ de Perambulatione facienda.

Ant. 128.

D A Writ *de Perambulatione facienda* ought to be ſued with the Aſſent of both Parties, where they are in Doubt of the Bounds of their Lordſhips, or of their Towns; then they by Aſſent may ſue this Writ, directed unto the Sheriff to make the Perambulation, and to ſet the Bounds and Limits between them in Certainty; and the Writ is ſuch:

The King to the Sheriff, &c. *We command you, that having taken with you twelve diſcrete and lawful Knights in your County, you go in your own Perſon to the Land of* A. *of* B. *in* N. *and the Land of* C. *of* D. *in* E. *and by their Oath cauſe to be made a Perambulation between the Land of him the ſaid* A. *of* B. *in* N. *and the Land of him the ſaid* C. *of* D. *in* E. *ſo that the Perambulation be made by certain Metes and Diviſions*; *becauſe the aforeſaid* A. *and* C. *have put themſelves before us upon that Perambulation, and make known to our Juſtices at* Weſtminſter, *&c. (ſuch a Day) or to the Juſtices at the next Aſſiſe*, &c. *under your Seal and the Seals of four lawful Knights of thoſe who were preſent at that Perambulation, by what Metes and Diviſions that Perambulation was made. And have there the Names of the Knights and this Writ*, &c. E

[134.] And the King may make his Commiſſion to other Perſons to make that Perambulation, as well as to the Sheriff, and to certify the ſame into the Common Pleas, or in the Chancery, or elſewhere, *&c.* And ſuch Commiſſion is oftentimes (*a*) granted to make Perambulation of three or four Counties where they are in Doubt in the Bounds and Limits thereof, and this Perambulation made by Aſſent, ſhall bind all the Parties and their Heirs. A

19 Ed. 3. 58.

But if Tenant for Life be of a Seigniory, and another who is Tenant in Fee-ſimple of another Seigniory adjoining, ſue forth ſuch a Writ or Commiſſion, by Reaſon whereof a Perambulation is made, it ſeemeth the ſame ſhall not bind him in Reverſion; neither ſhall the Perambulation made with the Aſſent of Tenant in Tail bind his Heir. B

And the Perambulation may be made for divers Towns, and in divers Counties, and the Parties ought to come in Perſon into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the Acknowledgment ſhall be enrolled in the Chancery, and thereupon a Commiſſion or Writ ſhall iſſue forth. And if the Parties cannot come in Chancery, then they ought to ſue forth a Writ of *Dedimus poteſtatem* directed to certain Perſons, to take their Acknowledgment, and to certify the ſame into the Chancery under his Seal, *&c.* and then upon that Certificate returned into the Chancery, That Commiſſion or Writ may be granted, altho' the Parties do not appear in Perſon in Chancery to pray the ſame. C

Hob. 20.

Writ de Warrantia Chartæ.

THE Writ of *Warrantia Chartæ* lieth properly where a Man doth enfeoff another by Deed, and bindeth him and his Heirs to *Warranty*, &c. Now if the Defendant be impleaded in an Aſſiſe, or in a Writ of Entry in D

In a Warran' Chartæ, the Defendant ſaid, that he had a Formedon pendent of the Land, and no Plea, and that was againſt the Iſſue in Tail. Itin .North. 2 Ed. 3. Garr. de Charters 13. 2 Ed. 2. Ibid. 6.

(*a*) *Note*; A Diviſion was made between the Counties of *C.* and *H.* by an Inqueſt taken of four Counties by Force of a Commiſſion; and reſolved, 1. That if Land lying in the Town of *A.* but in Truth within the County of *C.* be allotted to the County of *H.* that they ſhall ſtill remain of the Town of *A.* as before. 2. That this ſhall not conclude any of the County of *C.* to ſuppoſe by Writ or otherwiſe, that the Lands are in the County of *C.* 3. If they are at Iſſue on this Point, it ſhall be tried by a *Venue* of both Counties. *Quære* 29 *Ed.* 3. 45.

the Nature of an Aſſiſe, in which Actions he cannot vouch, then he ſhall have that Writ againſt the Feoffor or his Heir, who made ſuch Warranty; and the Writ is,

E (*a*) *The King*, &c. *Command* A. *that juſtly*, &c. *he warrant to* B. *one Meſſuage with the Appurtenances in* D. *which he holds and claims to hold of him*, *and whereof he hath his Charter*, *as it is ſaid*, &c. Or thus: *The Manor of* N. *with the Appurtenances*, *and the Advowſon of the Church of the ſame Town*, *which he holds*, &c. (as above) *whereof he hath his Charter*, or *the Charter of* D. *his Father*, or *Mother*, or *other Anceſtor*, *whoſe Heir he is*, *as it is ſaid*. *And unleſs*, &c.

Two Tenants in Common ſhall join in this Writ. 28 Ed. 3. 90. So where three are Jointenants, and a Releaſe to the other two. 40 Ed. 3. 41, 42. 16 H. 7. 6, 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he ſhall not have Advantage in this Writ.

And although the Writ doth ſuppoſe that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

F And alſo that the Plantiff holdeth any Land of the Defendant by Homage *Aunceſt'*, and hath no Charter thereof: (*b*) Yet he ſhall have this Writ of *Warr' Chartæ* againſt the Defendant, and the Writ ſhall ſay *unde Chartam habet*, *&c.* and yet he hath no Deed to ſhew, but only ſhall hold by Homage *Aunceſtrel*, which implieth a Warranty, and therefore in that Caſe, theſe Words, *unde Chartam habet*, *&c.* are not material.

5 Eliz. Dyer 221. If the Warranty be only againſt the Grantee and his Heirs, and there be not Dedi & Conceſſi in the Charter, per Curiam, the Writ lieth not.——12 H. 3. Garr. de Charters 27. One brought this Writ, Unde Chartam ſuam habet: The Defendant ſaid, Non habet Chartam ſuam, and the Plaintiff confeſſed the ſame, and ſaid it was Charta Anteceſſoris ſui; adjudged for the Defendant.

G If a Man have a Leaſe of Lands for Life rendring Rent, or maketh a Gift in Tail rendring Rent without Deed, and afterwards the Leſſee or Donee is impleaded in ſuch Action where he cannot vouch, then he ſhall have this Writ of *Warrantia Chartæ* againſt the Leſſor or Donor, or his Heir who hath the Reverſion: For that (*c*) Reverſion and Rent reſerved, maketh a Warranty

Co. Lit. 384. b. 21 H. 6. 8. Upon Owelty of Services this Writ lieth; but that is after Seiſin of the Services.

(*a*) *Note*; This Writ concerns the Land, and therefore a Fine may be levied thereon, 18 *Ed.* 4. 22. if it be brought in the County where the Land is. 29 *Ed.* 3. 3. *per Kirt. Sed Stouff. cont.* Yet for that this Writ is founded on the Covenant, which is in a Manner perſonal; although thereby the Plaintiff ought to recover Lands in Value; it is in the Party's own Election to bring the Writ in what County he pleaſes, and he need not bring it in the County where the Lands lie; for if he be impleaded thereof, he may well vouch in any County, 31 *Ed.* 3. *Garranty de Charters* 14. *per Thirn.* and ſo adjudged accordingly, and agreed by *Thirn.* *&c.* That if the Lands, *&c.* in divers Counties are paſſed by a Deed or Fine, he need not ſue ſeveral Writs, but one Writ ſhall ſatisfy for all, 29 *Ed* 3 3, 4. but he ought to ſuppoſe in his Count, that he is impleaded in each County. *Dyer* 221. *Quære.* See 12 *H.* 3. *pl.* 27. 24 *Ed.* 3. 35.

(*b*) See *Poſt.* 135. 24 *Ed.* 3. 35. 44 *Ed.* 3. *pl.* 18. 6 *H.* 7. 1, 11. and *note* by 29 *Ed.* 3. 4. he *derained* the Warranty againſt the Defendant, by bringing a *Scire facias* without ſhewing the Record.

(*c*) *Note*; Tenant by the Curteſy ſhall not vouch the Heir to recover in Value; nor the Leſſee for Life, him in Remainder, 14 *H.* 6. 25. and 10 *H.* 7. 10. a good Caſe of Voucher and Recovery in Value, *per Cur'* a Reverſion and Rent without the Words *Dedi*, *&c.* without Deed, good to bind him in the Reverſion to Warranty, be it the Leſſor or his Grantee. 10 *H.* 7. 10. 34 *Ed.* 3. *Garranty* 30. 20 *Ed.* 3. *Counterplea of Warranty* 7. But the Vouchee there may diſclaim if he be not the Leſſor, *&c.* 10 *H.* 7. 10. So if he be (not) Leſſor, Grantee or Heir. 17 *Ed.* 3. 39. 18 *Ed.* 3. 42. See *Co. Lit.* 384. *b.*

21 H. 6. 8.

in itſelf by the Statute of *Bigamis*, *cap. ult.* although he hath not any Deed thereof.

Upon a Feoffment in Fee with Warranty, he ought in his Count to ſet forth the Deed. 14 Ed. 3. 35. acc.

H (*a*) And if a Man give Lands to one in Fee by Deed by theſe Words, *Dedi*, *conceſſi*, *&c.* now he is bound to warrant the Lands to the Feoffee by thoſe Words, and if the Feoffee be impleaded, he ſhall have a Writ of *Warrantia Chartæ* againſt the Feoffor, by theſe Words, *Dedi*, *conceſſi*, *&c.* but not againſt his Heir, for the Heir ſhall not be bounden unto a Warranty made by his Father, unleſs he bind him and his Heirs to Warranty by expreſs Words in the Deed: As to ſay, *Ego & Hæred' mei omnia prædict' terras*, *&c. warrantizabimus*, *&c.*

I But note, That he ſhall not have the Writ of *Warrantia Chartæ* againſt the Feoffor, or againſt him againſt whom he hath the Warranty, if he be impleaded in any Action in which he may vouch him, for then he ought to vouch him to Warranty; and if he will not vouch him to Action, he ſhall not afterwards have a Writ of *Warrantia Chartæ* (*b*).

In a Præcipe quod reddat, where the Tenant hath a Releaſe or Confirmation with Warranty for Doubt, the Poſſeſſion ſhall be counterpleaded, he ſhall have this Writ. Wood and Brian. 12 H. 7. 2.

K (*c*) And a Man may ſue forth this Writ of *Warrantia Chartæ* before he be impleaded in any Action, but yet the Writ doth ſuppoſe that he is impleaded: And if the Defendant appear, and ſay that he is not impleaded, by that Plea he confeſſeth the Warranty, and the Plaintiff ſhall have Judgment to recover his (*d*) Warranty, ſo as if the Defendant be after impleaded, and vouch him to Warranty, and he entreth into the Warranty, and pleadeth and loſeth, and that the Defendant recover in Value. The Defendant ſhall have in Value of the Lands againſt the Vouchee, which he had at the Time of the Purchaſe of his *Warrantia Chartæ*, and therefore it is good Policy to bring his *Warrantia Chartæ* againſt him before he be ſued, to bind the Lands of the Vouchee

21 H. 6. 41. 22 H. 6. 22. 30 H. 7. 7.

2 H. 4. 14. & 12 H. 4. 13. he ſhall have in Value the Lands which he had at the Time of Judgment, for the Judgment makes them ſubject to the Execution. 1 Ed. 3. 11. Fitz. Garr. de Charter 2. ac. 8 Ed. 2. Voucher 237. A Man cannot vouch a Clerk attaint, or a Man outlawed; but rather have Warrantia Chartæ. Contra of an Ideot quod reddat. Quære if it be Law at this Day. Br. Warr. Chart. 29. 8 Ed. 4. 10. Markham acc. 24 Ed. 3. B. Warrant. Chart. 13 acc. 19 Ed. 3. Garr. Chart. 9. ac.

(*a*) *A.* makes a Leaſe for Life by *Dedi*, and grants over the Reverſion; yet the Leſſee may vouch *A.* 48 *Ed.* 3. 2. See 6 *H.* 7. 2. 14 *H.* 6. 25. 48 *Ed.* 3. 2. *Perk.* 26. and *note*; if one warrants only againſt himſelf and his Heirs, Warranty of Charters does not lie, *per Cur'*, if it has not the Word *Dedi* in the Deed. *Dyer* 221.

(*b*) See 18 *Ed.* 3. 42. *Garranty de Charters* 8. It is no Plea here to ſay that the Plaintiff is impleaded in ſuch an Action, wherein he may vouch, *&c.* though it is a good Plea to ſay, that he was not Tenant the Day of the Writ purchaſed; yet in a *Scire facias*, it is a good Plea to ſay, that he was impleaded in ſuch an Action, wherein he might vouch, but did not, *&c.* and ſo by Reaſon of his Default he could not have Execution. See accordant 9 *Ed* 2. *Garranty de Charters* 30. that it is a good Plea. *Vide infra* K. *ſed N. Br.* 135. D. *contra*.

(*c*) And therefore the Count is good, without ſhewing for what he is impleaded. 29 *Ed.* 3. 4. (*poſt.* 135 B.) See 7 *H.* 6. 17, a *Scire facias* againſt a Diſſeiſor on a Fine, and pending the Writ the Diſſeiſee enters, he ſhall not have a Warranty of Charters, if no *Scire facias* be ſued againſt him. By *Paſton*.

(*d*) But no Damages. 18 *Ed.* 3. 42. 29 *Ed.* 3. 4. 31 *Ed.* 3. 22. See 2 *H.* 4. 14. *contr.* and 1 *Ed.* 6. 11. *contra*. See 16 *Ed.* 3. *pl.* 20. *contra* 9 *Ed.* 2. *pl.* 30.

which he had at (*a*) that Time. For if a Man be vouched, he ſhall not render in Value, but of the Lands which he had at the Time of the Voucher, and if he have aliened the Lands before the Voucher, he ſhall render nothing in Value; and therefore it is Policy to bring his *Warrantia Chartæ* againſt him when he hath the Land to render in Value. And upon this Writ and Judgment the Land ſhall be bound. But if a Man recover his Warranty by Writ of *Warrantia Chartæ*, and hath bounden the Land which the Vouchee had at that Time; yet if he be afterwards impleaded for that Land, for which he recovered his Warranty, he ought to vouch him againſt whom he recovered [135.] his Warranty, to defend the Land, if he be ſued in any Action wherein he may vouch, otherwiſe he ſhall not have Advantage by Recovery of his Warranty in the *Warrantia Chartæ* (*b*).

A And if a Man recover his Warranty in a *Warrantia Chartæ*, and afterwards is impleaded in an Action in which he cannot vouch, as by Aſſiſe, or by (*c*) *Scire facias* ſued forth upon a Fine, &c. It ſeemeth he ought to give Notice to him againſt whom he hath recovered his Warranty of the Action, and to pray him to ſhew him what he ſhall plead for to defend the Land, &c. *Quære tamen* (*d*) thereof.

B If a Man exchange Lands with another by Deed, if he be impleaded, he may vouch him with whom the Exchange was made, by reaſon of that Exchange; and alſo he ſhall have a Writ of *Warrantia Chartæ* by that Deed of Exchange, although there are not Words of Warranty in the Deed; and the Vouchee ſhall have a Writ of *Warrantia Chartæ*; *tamen quære* (*e*) of that. 23 H. 3. Gar. Charters 26.

(*a*) *Viz.* At the Time of the Warranty *derained*, *per Hill.* 16 *Ed.* 3. *Garranty de Charters* 20. and *per Finchd.* If the Defendant has not Lands in Value, the Plaintiff ſhall recover Damages. 29 *Ed.* 3. 3. *vide poſt.* 135. H.

But *Note*; If the Tenant vouch, and after the Entry into the Warranty the Vouchee dies, and in a Reſummons againſt him he revouches the Heir, and the Heir loſes all the Land, which his Anceſtor had the Day of the Voucher, he ſhall be bound to render in Value to the Tenant, *per Wilby*, 18 *Ed.* 3. 17. and ſee the like *per Cur.* 22 *Ed.* 3. 3. But it is there held, That when he recovers in Value in another County, than where the Vouchee is ſummoned (except the Tenements deſcend after the Voucher) he ſhall not. 13 *Ed.* 3. *Recovery in Value* 3. Yet ſee 4 *Ed.* 2. *Voucher* 248. *quod ſic*, *per Cheſter* on a *Teſtatum*, *quod Hill negavit.* See 29 *Ed.* 3. 4. 16 *Ed.* 3. *pl.* 20. 46 *Aſſ.* 51. 19 *Ed.* 3. *pl.* 9. 41 *Ed.* 3. *pl.* 22.

(*b*) See accordant 18 *Ed.* 3. 42. 19 *Ed.* 3. *Garranty de Charters* — that it is a good Plea in a *Scire facias* on a Judgment in a *Warrantia Chartæ*, but not in the *Warrantia Chartæ* itſelf.

(*c*) It ſeems he ought to bring his *Scire facias pendente placito.* 19 *Ed.* 3. *Garranty de Charters.* 11 *Ed.* 3. *ibid.* 22. But in the *Scire facias* he ought to ſhew the firſt Deed if the Deed be not entred. 18 *Ed.* 3. 46. *per Thirn. vide* 8 *Ed.* 4. 1.

(*d*) And therefore the Guarrantor may maintain the Guarrantee in an Aſſiſe brought againſt him, on the Tenant's Requeſt. 11 *H.* 6. 41.

(*e*) *Videtur quod ſic*, *per Thirn.* 17 *Ed.* 3. 44. *ſed Hill and Shard contra*, becauſe none ſhall have it but the Tenant himſelf; yet ſee 18 *Ed.* 3. 19. *per Shard*, and 7 *H.* 4. 18. That a Vouchee ſhall have a *Warrantia Chartæ* where he cannot vouch (over) 21 *Ed.* 3. 50. and by *Seaton*, the Defendant in a *Warrantia Chartæ*, has no Remedy to have his Warranty over. See 31 *Ed.* 3. *Warranty of Charters* 22. *per Burton*, that a Tenant by Warranty ſhall have his Warranty-over. *Vide ant.* 124. F. 23 *H.* 6. *pl.* 26. 17 *Ed.* 2. 44. *contra*; *quære* 15 *Ed.* 3. *pl.* 25.

7 H. 4. 18. 17 Ed. 3. and Br. War. c. 30. None ſhall have the Writ but the Terre-tenant. 24 Ed. 3. 25. Willbye 7 Ed. 4. 12. 3 Ed. 4. 7.

And if a Man be impleaded who is not Tenant of the Land, but Pernor C
of the Profits, he ſhall not have a Writ of *Warrantia Chartæ*, becauſe he
can loſe nothing. And a Man ſhall have a Writ of *Warrantia Chartæ* al- D
though he may vouch in the Action brought againſt him, and if he do recover
in the *Warrantia Chartæ*, and afterwards loſe in the Action brought againſt
him, in which he hath vouched him againſt whom he recovered his Warranty,
then he ſhall have a Writ which is called *Habere fac' ad valenc'* (*a*), *&c.*
preſently within the Year after the Recovery, and ſhall not ſue forth *Sci' fac'*.
And an Aſſignee ſhall have a Writ of *Warrantia Chartæ.*

A good Plea that he had nothing in the Land jour de brie purchaſe.

(*b*) And a Man ſhall have a Writ of *Warrantia Chartæ* of Land or Rent E
which he demanded againſt him out of Land, *&c.* but there he ought to
vouch of Land diſcharged of the Rent, *&c.* if he may vouch in the Action.

19 Ed. 3. Gar. c. 10. 4 Ed. 3. Gar. c. 12. ac. for Rent-Service.

(*c*) And a Man may bring his Writ of *Warrantia Chartæ* in what County F
he pleaſeth, if the Deed bear not Date in a certain Place or County; for then
he ought to bring the Writ where the Deed beareth Date. But if a Man
bring a Writ of *Warrantia Chartæ* by reaſon of Homage *Aunceſtrel*, *&c.* then
it ought to be brought in the County where the Land lieth.

Ed. 1. Voucher 266. 21 H. 6. 40. Newton. See Littl. 111. for the Reaſon of this Caſe.

(*d*) And if a Man doth infeoff another of Lands by Deed with Warranty, G
if the Feoffee make a Feoffment over, and taketh back an Eſtate in Fee, the
Warranty is determined, and he ſhall not have a Writ of *Warrantia Chartæ*,
becauſe he is in of another Eſtate. And ſo if *A.* diſſeiſe *B.* and infeoff *C.* (*e*)
with Warranty, who infeoffeth *D.* with Warranty, upon whom a Stranger
entreth, in whoſe Poſſeſſion *B.* the Diſſeiſee releaſeth his Right, all the Warranties
are extinct, and if *D.* re-enter, and be impleaded, he ſhall not have a
Writ of *Warrantia Chartæ*, becauſe he is in of another Eſtate by Wrong.
(*f*) But if a Man be impleaded, for which he purchaſeth a Writ of *Warrantia*

(*a*) So is 16 *Ed.* 3. *Garranty de Charters* 20. *contra* where he recovers before the Writ brought againſt him; yet there he ſhall have a *Scire facias.* 19 *Ed.* 3. *Warranty of Charters* 10. And it ſeems if the Defendant does not acknowledge (or know) that he has loſt, he ſhall have only a *Scire facias.* 16 *Ed.* 3. *ibid.* 20. and 29 *Ed.* 3. 4. *per Tiff.* See 18 *Ed.* 3. 4, 2. 9 *Ed.* 2. *pl.* 2. 45 *Ed.* 3. 10. *Bro. Warranty* 20. 36 *Ed.* 3. *pl.* 11. 9 *Ed.* 2. *pl.* 30. 31 *Ed.* 3. *pl.* 22.

(*b*) So is 30 *Ed.* 2. 20. 31 *Ed.* 3. *Garranty de Charters* 20. *per Finchd.* but others *contra*, where the Caſe was, *A.* enfeoffs *B.* with Warranty, and *B.* recovers in a *Warrantia Chartæ.* on a general Count of the Land, and afterwards a Rent is recovered againſt him; and he brings a *Scire facias* on the general Judgment in the *Warrantia Chartæ* to have the Value of the Rent; and *per Thirn.* he ſhall not have in Value, ſeeing he never demanded Warranty of the Rent, but *Finchd.* and it ſeems the better Opinions were *contra.*

(*c*) 4 *Ed.* 3. *pl.* 12.

(*d*) And ſee accordant *per Newton.* 22 *H.* 6. 22. *vide infra.*

(*e*) And ſee accordant 21 *H.* 6. 41.

(*f*) *Contra per June* and *Paſton.* 14 *H.* 6. 26. *Note* the Caſe 21 *H.* 6. 41. *Warranty of Charters per Mills* verſus *H. Clifford*, and counts that one *R.* had arraigned an Aſſiſe againſt him and the others, pending which Writ, the Plaintiff came to the Defendant, and ſhewed that he was in by his Feoffment with Warranty, and prayed him to adminiſter, *i. e.* to aſſiſt him with a Plea to bar the Demandant, which he refuſed; and then pleads, that long Time before the Defendant any Thing had, *A.* and *B.* were ſeiſed, till diſſeiſed by *C.* who enfeoffed the Defendant, who enfeoffed the Plaintiff, as he had alledged, and *A.* died, and *B.* entred on the Plaintiff. *Markham* *rantia Chartæ* againſt whom he hath a Warranty, and vouch him alſo in the Action; and afterwards, depending the Action, a Stranger who hath ancienter Title entreth upon him, yet that ſhall not abate his *Warrantia Chartæ* ſued out before; *quod vide* 21 *H.* 6.

H (*a*) If a Man be impleaded in Aſſiſe, *&c.* and he bring a Writ of *Warrantia Chartæ*, and counts, that he is impleaded by Aſſiſe, *&c.* and that he hath loſt, *&c.* If the Plaintiff recover his Warranty, he ſhall recover his Damages, and alſo to have the Value of the Land loſt.

4 Ed. 2. Gar. Charters 29. it is but a perſonal Action in the Nature of a Covenant, therefore he ſhall recover Damages. 2 H. 6. 31. It is holden, that in this Caſe he ſhall recover Damages only. But it ſeemeth by Br. Warr. Chart. 31. that if he hath no Land to be recovered in Value, that he ſhall not recover Damages tantum, nor more than in Voucher.

I And a Man may ſue forth divers Writs of Warranty of Charters againſt divers Men: And if he hath divers Warranties againſt them, he ſhall recover ſeverally againſt them.

K (*b*) And a Man may ſue a Writ of *Warrantia Chartæ* at the Common Law for a Warranty made of Lands in Ancient Demeſne.

Markham demurred to this Plea, for that it does not ſhew whether the Entry was before, or pending, or after the Aſſiſe, and 22 *H.* 6. 22. it was ruled by the Court that it was no Plea, if it does not ſhew the Entry to be before the Aſſiſe brought, or before the Requeſt made: For if the Entry was after Judgment or Requeſt, the Plaintiff is lawfully intitled to an Action: For by *Newton*, the Requeſt is in Nature of a Voucher of a Vouchee, ſo as to devolve the Warranty (*contra* if it be after the Entry into Warranty) whereupon *A.* waived the ſaid Plea, and ſhewed that *B.* entred on the Plaintiff before any Requeſt; and *Markham* demanded Judgment, ſeeing that he acknowledges he was Tenant at the Time of the Aſſiſe arraigned, and that the Requeſt was pending the Aſſiſe; in which Caſe ſuppoſe a Stranger had entred by elder Title, yet againſt him (Law) the Writ is good, as of the Tenancy he had the Day of the Writ purchaſed: And by *Newton*, *Paſton* and *Fulk.* it was now a good Plea; for although he remained Tenant to the Demandant after the Entry of *B.* yet he is not ſo againſt the Defendant; wherefore they joined Iſſue, if the Entry was before the Requeſt. 22 *H.* 6. 22, 23. and *vide* 41. *ib.* ſo that it ſeems to me, that though the Entry was after the Requeſt, yet if it was before the Writ of Warranty of Charters purchaſed, the Entry of the Stranger would ouſt him of his Warranty; for the Requeſt is not in lieu of Voucher, but only the Writ of Warranty of Charters; and this is well proved, for that the Lands which the Vouchee has, are bound from the Time of the Voucher; but the Lands of the Tenant in the Warranty of Charters only from the Time of the Writ purchaſed; yet it ſeems clearly, that if in an Aſſiſe the Defendant requeſts his Guarrantor to give him a Plea, and he refuſes, and after Judgment is given, *&c.* that ſo long as he continues Tenant of the Land he ſhall have a *Warrantia Chartæ*; but *contra* if he has not made any Requeſt, and according to this Diverſity are the Books to be intended. *Regiſter* 158. and 24 *Ed.* 3. 75. becauſe till Execution he continues Tenant, and has his firſt Warranty ſtill on Foot.

If a Warranty be made to a Man and his Aſſigns, the Aſſignee of the Heir of the Feoffee ſhall vouch as Aſſignee. *Quod nota*, 7 *Ed.* 3. *Warranty*, &c. 44, 10 *Ed.* 3. 32. 19 *Ed.* 2. 85. 13 *Ed.* 1. 93.

(*a*) See accordant 4 *Ed.* 3. *Guarranty*, &c. 29 *Ed.* 3. *ibid.* 30. and *ant.* 134. K. *Bro. Garranty* 31. 16 *Ed.* 3. *pl.* 20. 4 *Ed.* 2. *pl.* 29.

(*b*) See 16 *Ed.* 3. *Cauſe a remover* 15. *Reg.* 12. 30 *Ed.* 3. 13. and *per Skipw.* the Tenant ſhall have Warranty againſt the Lord in the Lord's own Court.

(*a*) And if a Man have a Writ of *Warrantia Chartæ* depending, although L that the Plaintiff who brought the Action againſt him who brought the *Warrantia Chartæ* be Nonſuit in his Action, the ſame ſhall not abate the Writ of *Warrantia Chartæ* although he hath not an Action ſued againſt him for the Land, *&c.*

Writ de Meſne (*b*).

THE Writ of *Meſne* lieth where there is Lord, Meſne and Tenant, and M each hold by Owelty of Services, as by Homage, Fealty and twenty Pounds Rent yearly. Now if the Tenant be diſtrained by the Lord Paramount for the Rent or Service of the *Meſne* behind, he ſhall have a Writ of *Meſne* againſt the Lord who is *Meſne*, and by the Writ he ſhall recover his Damages if he be diſtrained, otherwiſe not: And by that Writ he ſhall be compelled to do the Service, and to pay the Rents, and the Writ may be ſued in the County before the Sheriff; and the Writ is,

(*c*) *The King to the Sheriff*, &c. *We command you, that you juſtice* A. *that* N. *juſtly*, &c. *he acquit* B. *of the Services which* C. *requires from him for his Freehold, which he holds of the aforeſaid* A. *and whereof he complains that he is diſtrained for his Default, as he can reaſonably ſhew, that he ought to acquit him, that we may hear no more Clamour*, &c.

18 H. 3. Meſne 78. adjudged that the Meſne ought to acquit the Tenant againſt all Lords Paramount, 29 Ed 3. 34. ac. Note, That the Plaintiff in a Writ of Meſne needeth not in the Count to ſhew the Certainty of the Tenure between the Meſne and the Lord Paramount, but generally to ſay, that he holdeth over, per 38 H. 6. 12. and 39 H. 6. 29. 13 Ed. 4. 6. If there be Lord, Meſne, and Tenant, and the Tenant is diſtrained by the Lord, for which he bringeth a Replevin, the Lord avoweth upon a Stranger; the Tenant may have a Writ of Meſne: Yet the Meſne cannot join becauſe the Avowry is made upon a Stranger.

And if it be ſued in the Common Pleas, the Writ is,

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he acquit* B. *of the Service which we require from him for his Freehold*, &c. *whereof he the ſaid* A. *who is the Meſne between us and the aforeſaid* B. *ought to acquit him, and whereof he complains, that for his Default he is diſtrained; and unleſs*, &c. And this Writ is where the King diſtraineth for Services, *&c.*

And if another Perſon be Lord Paramount, then the Writ is, *That he acquit* B. *&c. which* C. *requires of him for his Freehold*, &c. *whereof he the ſaid* A. *who is the Meſne between* C. *and the aforeſaid* B. *ought to acquit him*, &c.

(*a*) *Infinite*; and therefore in a Writ againſt two, they may fourch *per* Diſtreſs *in infinitum*. 38 *Ed.* 3. 1. 9 *Ed.* 2. *pl.* 3. 41 *Ed* 3. *pl.* 9.

(*b*) *Note*; The Writ of Meſne ought to be brought in the County where the Lands lie, and if *Nihil* be returned againſt the Lord, a Writ ſhall iſſue to another Sheriff on a *Teſtatum*. 29 *Ed.* 3. 3.

(*c*) *Note*; Though *A.* does not hold of *C.* immediately, but only by a Meſnalty, yet the Writ is good; adjudged 29 *Ed.* 3. 34. — Alſo in this Writ the Quantity of the Services are taken by Proteſtation, and ſeveral Tenancy is a good Plea. 2 *H.* 5. 2.

A And the Writ of *Meſne* may be ſued and removed out of the County, at the Suit of the Plaintiff by a *Pone* without Cauſe, and at the Suit of the Defendant with Cauſe ſhewed, as in a *Replevin.* [136.]

And a Man may have an Acquittal, and ſue forth a Writ of *Meſne* upon it
divers Ways. One if the *Meſne* grant unto his Tenant by his Deed, upon his
Tenure made of him, to acquit him againſt his Lord Paramount, he ſhall
B have a Writ of *Meſne* upon that Grant. Another Cauſe of Acquittal is where
he holdeth in Frankalmoigne. Another Cauſe is, where he holdeth in Frank-
marriage (*a*); or where he holdeth by the like Service as the *Meſne* holdeth
C over, which is called Owelty (*b*).

14 Ed. 3. Meſne 7. 38 H. 6. 12. 39 H. 6. 29. Priſot.

D And alſo a Man may have an Acquittal by Preſcription, as if he hold by Homage *Aunceſtrel.*

And alſo by Conuſance in a Court of Record for to acquit him, *&c.* And the Men of *Cornwall* claim to plead a Plea in a Writ of *Meſne* in the County without Writ, and that they have had Allowance thereof in Eyre. And although the Writ of *Meſne* be depending betwixt the *Meſne* and the Tenant Paravail, yet the Lord ſhall diſtrain the Tenant Paravail for the Rents and Services, and ſhall not tarry until the Writ of *Meſne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

E (*c*) And if a Man bring a Writ of *Meſne* where he is not diſtrained, yet the Writ is maintainable; but then he ſhall not recover Damages: For the Writ is brought only for to recover the Acquittal, *&c.* As if he bring a Writ of Warranty of Charters where he is impleaded, *&c.* he is to recover the Warranty *pro loco & tempore.*

7 H. 4. 12. Ant. 134. K. Br. Meſne 22.

F And if the Tenant holdeth by the Services which the *Meſne* holdeth over, and alſo by other Services, it is a good Owelty to have Acquittal, becauſe it is ſuch, and more. And although that the Lord dieth depending the Writ of *Meſne*, yet the Writ ſhall not abate (*d*).

4 H. 6. 25, 28. 4 Ed. 4. 35. 11 H. 4. 55. 10 H. 6. 26.

G (*e*) And Tenant for Term of Life where the Remainder is over in Fee, ſhall have a Writ of *Meſne* againſt the *Meſne:* But Tenant for Life ſhall not have a Writ of *Meſne* againſt him in the Reverſion. But Tenant in Dower ſhall

25 H. 6. Meſne 12. 17 Ed. 3. 19. Br. Meſne 22.

(*a*) *Note*; The Iſſue of the Donee in the fourth Degree ſhall not have a Writ of Meſne, as on a Frankmarriage, but as on a Gift in Tail. 12 *H.* 4. 9. *W. W.* See 38 *H.* 6. 12. 11 *H.* 4. 52. 46 *Ed.* 3. 31.

(*b*) Acquittal by Owelty. See 22 *Ed.* 3. 3. he ought to ſhew Seiſin or Tender of the Services, whereof he is acquitted 30 *Ed.* 3. 24. But in ſuch Caſe, the Plaintiff ought to ſhew Seiſin of the Services in the Meſne, either by himſelf, or his Feoffor, *&c.* and this Seiſin is traverſable. 18 *Ed.* 3. 19. 4 *Ed.* 2. *Meſne* 63. See 8 *Ed* 3. 49. 5 *Ed.* 3. 56. 11 *H.* 4. 52. a good Caſe of Acquittal, that the Meſne and his Anceſtors had acquitted the Tenant and his Anceſtors, and all thoſe whoſe Eſtates he hath: Adjudged 27 *Ed.* 3. 82.

(*c*) And therefore it ſeems, if the Meſne pleads not diſtrained, the Plaintiff ſhall recover the Acquittal notwithſtanding, yet it ſeems he ſhall not be amerced, if he comes (not) at the Day. 30 *Ed.* 3. 22. 6 *Ed.* 4. 7. See 30 *Ed.* 3. 29, 30. 31 *Ed.* 3. *Judgment* 136. 14 *Ed.* 3. *Ibid.* 158.

(*d*) And it was accordingly ſo adjudged in both Points. 4 *H.* 6. 27. *Quære*, if there may be a good Forejudger in ſuch Caſe, 10 *H.* 6. 26. and it ſeemed to *Strage* that there ſhould, for the Judgment is no other, but that the Meſne ſhall be forejudged, and that the Tenant ſhall be attendant *Capitali Domino.*

(*e*) See accordingly, but then he ought to count according to his Caſe. See 13 *Ed.* 3. *Meſne* 12.

have a Writ of *Meſne* againſt him in the Reverſion, becauſe ſhe hath her State by the Law.

17 Ed. 3. 15. contr. per Thorp. 38 H. 6. 12. Priſot. 50 Ed. 3. 23. 10 H. 6. 26 34 H. 6. 47. 13 Ed. 4. 6. 7 H. 4. 18. 18 Ed. 3. 19. 4 Ed. 4. 35. Billing. acc.

H (*a*) And if the *Meſne* hath paid the Services unto the Lord Paramount, yet if the Tenant be afterwards diſtrained for thoſe Services, he ſhall have a Writ of *Meſne*. But it is a Queſtion whether he ſhall recover Damages in that Writ. But it ſeemeth he ſhall have Damages, becauſe the *Meſne* ſhall recover Damages againſt the Lord, if he will put his Cattle in the Pound for the Tenant, and ſue a *Replevin*, *&c.* and yet not diſtrained in his Default is a good Plea in a Writ of *Meſne*. And if he pay the Services, he is not diſtrained in his Default: For if the *Meſne* grant unto the Tenant to acquit him after the Tenure made, he ſhall have a Writ of *Meſne* thereupon, as I conceive (*b*).

14 Ed. 3. Meſne.

I And the Huſband and Wife ſhall have a Writ of *Meſne* where they are diſtrained for the Lands of the Wife.

12 Ed. 3. Meſne 12. 10 Ed. 3. 58. Ibid. 21. 8 Ed. 3. 26. Meſne 19.

K (*c*) If the *Meſne* grant the Meſnalty for Life, and the Tenant attorn, the Tenant ſhall not have a Writ of *Meſne* againſt the Grantee for Life. But Tenant in Tail ſhall have a Writ of *Meſne*: And Ancient Demeſne is a good Plea in a Writ of *Meſne* (*d*).

(*a*) *Note*; Tho' the Services of the Meſne be not in Arrear, yet a Writ of Meſne lies, becauſe the Tenant cannot plead *Rien arrear.* 39 *Ed.* 3. 34. *contra.* 17 *Ed.* 3. 15. See 39 *Ed.* 3. 19. 11 *H.* 4. 52.

(*b*) *Note*; *A.* is Lord, *B.* Meſne, *C.* Meſne, and *D.* Tenant, *A.* diſtrains *B.* for Services, *D.* brings a Writ of Meſne againſt *C.* and recovers, *C.* brings a Writ of Meſne againſt *B.* and counts generally, *B.* pleads not diſtrained in his Default, and the other replies *contra*, and the ſpecial Matter is found *ut ſupra*, and that the Services of *B.* were in Arrear, but not the Services of *C.* and it was held, 1. That without ſome ſuch ſpecial Miſchief the Tenant in Service, *viz.* the Meſne ſhall not have a Writ of Meſne. 2. That in the Caſe of ſuch Miſchief he ſhall have it, and ſo each Meſne ſhall have it againſt the other, till it come to him in whom the Default is. 39 *Ed.* 3. 34. 39 *H.* 6. 31. 7 *H.* 4. 18. accordant. 3. That there ought to be a ſpecial Count, 20 *Ed.* 3. *Meſne* 14. or at leaſt a ſpecial Replication, and that on the general Iſſue found, this Matter ſhall not aid him. 4. It ſeems that the one Meſne ſhall not recover Damages of the other before Execution, *ibid.* and 17 *Ed.* 3. 44. 18 *Ed.* 3. 19. Yet it ſeems, that notwithſtanding the Recovery againſt *C.* yet if *B.* had no Notice of the Diſtreſs, or if his Services were not Arrear, a Writ of Meſne does not lie againſt him by *C.* no more than it lies againſt *C.* without Notice where his Services were not in Arrear. For in that Caſe there is no Default in him. See 7 *H.* 4. 18. Alſo, if the Meſne's Beaſts are impounded for thoſe of the Tenant, he ſhall have a Replevin of them, and ſo may each Meſne have, *&c.* And if any Meſne refuſe to do ſo, *per Cur'*, the Tenant ſhall have a Writ of Meſne. See 10 *H.* 6. 26. if the Avowry be abateable, or if no Services be due or Arrear; yet if the Meſne will not join with the Tenant on Requeſt, a Writ of Meſne lies, for that the Tenant being a Stranger, ſhall not plead in Abatement of the Avowry.

(*c*) See 40 *Ed.* 3. 7. 12 *Ed.* 3. *Meſne* 11. *contra.*

(*d*) So it is in Account againſt a Guardian in Socage, and in Replevin, 21 *Ed.* 3. 10. yet ſee in a Writ of Meſne on a Deed of Acquittal by the Tenant, the Defendant alledges that the Lands are held of the Manor of *S.* which is Antient Demeſne; and it was not allowed, but he was put to anſwer to the Deed. 34 *Ed.* 1. *Antient Demeſne* 38. But ſee in a Writ of Meſne by Tenant in Dower, againſt the Heir who alledges that the Tenements are held of the Manor of *C.* which is Antient Demeſne; and although it was ſaid, that one cannot have Proceſs of Forejudging on Proclamations in a Court of Antient Demeſne, and that the Heir cannot be diſtrained there, for he has only the Services, *&c.* yet it was awarded, that he ſhould take nothing, and it was ſaid, that this Plea ſhall be pleaded in a *Petit* Writ of Right in the Lord's Court, and that he ſhall make Proteſtation, *&c.* 28 *Ed.* 3. 45. accordant. 30 *Ed.* 3. 12. *per Skipw.*

L And a Writ of *Meſne* lieth againſt Tenant for Life where the Remainder is over in Fee: And the Writ of *Meſne* ſhall be maintainable againſt the Heir of the Meſne where his Anceſtors have granted the Services of the Tenant by Fine, if the Tenant hath not attorned according to the Fine: For he ſhall not be compelled to attorn without granting Acquittal unto him: And if he grant Acquittal, he ſhall have Writ of *Meſne* upon the Grant; and yet it commenceth after the Tenour. 46 Ed. 3. 7. 28 Ed. 3. 95. 39 H. 6. 3. 28 H. 6. 6.

M And if the Tenant be diſtrained for the Relief of the Meſne, or for reaſonable Aid, *&c.* he ſhall have a Writ of *Meſne* againſt him. 39 H. 6. 29. 38 Ed 3. 34.

N If a Man be Tenant by the Curteſy of a Meſnalty, *&c.* if the Tenant be diſtrained, the Writ of *Meſne* ſhall be ſued againſt him in the Reverſion, and not againſt the Tenant by the Curteſy. *H.* 4 *Ed.* 2. 4 Ed. 2. Meſne 52. 14 Ed. 2. Meſne 72. contra, and Note 84.

O A Seigniory is granted unto the Huſband and Wife, and to the Heirs of the Huſband, and in a *Per quæ ſervitia* ſued by them, the Tenant will not attorn, unleſs they will grant to acquit him, *&c.* for which the Huſband grants for him and his Heirs, to acquit the Tenant and his Heirs, and afterwards the Huſband dieth; the Tenant may bring a Writ of *Meſne* againſt the Huſband's Heir, during the Life of the Wife who was Tenant for Life, and good. *Quod vide H.* 5 *Ed.* 3. contr. 40 Ed. 3. 7. 12 Ed. 3 Meſne 11. Meſne 52.

P And in the Time of *Ed.* 1. the Tenant brought a Writ of *Meſne*, becauſe he did not acquit him of a Rent-charge demanded, *&c.* becauſe he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable. Meſne 56.

Q And an Abbot ſued a Writ of *Meſne*, by reaſon of the Confirmation made unto him in *Frankalmoigne*, and it was maintainable. *H.* 2 *Ed.* 2. 5 Ed. 2. Meſne 64.

R If a Man have Judgment to recover his Acquittal in a Writ of *Meſne*, if he be not afterwards acquitted, he ſhall have upon the Recovery a *Diſtringas ad acquietandum* againſt the Meſne, if it be three or ten Years after the Judgment given; and that is given by the Statute of *Weſtm.* 2. *cap.* 9. And a Scire facias againſt the Lord. 14 Ed. 3. Meſne 7.

S If the *Meſne* do acknowledge Acquittal by Fine, and after he ſueth a *Scire facias* thereupon, and he appeareth not at the Return of the Writ, then ſhall iſſue a Writ of *Diſtringas ad acquietandum*, *&c.* and an *Alias* and *Pluries*, *&c.* until he appear; and if he come upon the *Diſtringas*, and cannot plead any Thing, but that he ought for to acquit him, then the Plaintiff ſhall recover Damage againſt him.

T (*a*) And if the Anceſtor do acknowledge an Acquittal in a Court of Record, the Tenant ſhall have a *Scire facias* againſt the Heir to acquit him, without other Specialty, *&c.* (*b*). 46 Ed. 3. 31. 14 Ed. 3. Meſne 7.

V And if a Man recover Acquittal of a Writ of *Meſne*, *&c.* he ſhall after have a *Diſtringas ad acquietandum*; and if he do not appear, he ſhall be fore- 49 Ed. 3. 31.

(*a*) But notwithſtanding ſuch Acknowledgment of the Acquittal, in a Writ of Meſne againſt the Heir, he may plead, that he had nothing in the Seigniory without ſhewing how, as that it was demiſed, *&c.* *contra* of his Father who acknowledged, *&c.* 28 *Ed.* 3. 93.

(*b*) So it is on a Recovery. 14 *Ed.* 3. *Meſne* 7.

[137.] judged by Default of his Meſnalty; and ſo if he appear, and it be found by 46 Ed. 3. 31. Verdict againſt him, he ſhall be forejudged (*a*).

Old N.B. 83. 11 Ed. 3. Br. Suit 4. Ed. 3. 42, 83. And a Man ſhall have a Writ of *Meſne* to acquit him of Suit unto a Hundred, which the *Meſne* ought to do by reaſon of his Meſnalty, and not by reaſon of Reſiancy, &c. And the Proceſs in a Writ of *Meſne* is Summons, Attachment and *Diſtringas*; and if the Defendant hath not any Thing in the County by which he can be diſtrained, then the Plaintiff may ſurmiſe that he hath Aſſets in another County, and pray a *Diſtringas* thither, and he ſhall have it by the Statute; and upon that he ſhall be forejudged, &c. if he do not appear, and the Writ be ſerved and returned againſt him. But that is given by the Statute: For at the Common Law he ſhall not have but Diſtreſs infinite in the ſame County where the Writ was brought, and that is in the County where the Land is; and at this Day he may chuſe whether he will ſue the Proceſs at the Common Law, Diſtreſs infinite in the County, or the Proceſs which is given by the Statute, Summons, Attachment and the Grand Diſtreſs, which ſhall have Day to anſwer by ſuch Times as two Counties may be holden, in which the Sheriff ſhall make Proclamation that he come to anſwer the Plaintiff; and if he do not come, and the Writ be returned, then he ſhall be forejudged. A

(*a*) If the Lord diſtrains the Meſne for more Services than the Meſne ought to pay, the Meſne is not bound to acquit the Tenant of the Surpluſage. 39 *H.* 6. 31.

See 14 *Ed.* 3. *Meſne* 7. *A.* brings a Writ of Meſne againſt *B.* and counts of an Acquittance by Reaſon of Tenure in Frankalmoign, and Judgment was, that he ſhould recover Damages, and a Precept went to the Sheriff, *quod diſtringeret* B. *ad acquietand. B.* dies, a *Scire facias* goes againſt *C.* the Heir of *B.* to have Acquittal, *C.* not acknowledging that he had the Seigniory at the Time, or that he had any more, &c. pleads, that he has nothing by Diſcent in Fee from his Father within the ſame Lands, &c. And *Note*; the Abbot in the ſaid Recovery counted of Frankalmoign, *unde chartam*, &c. and therein theſe Points were agreed, *viz.* 1. That this Judgment is well enough to warrant a *Scire facias* for the Acquittal. 2. That no other Proceſs of Execution lies againſt the Heir than a *Scire facias*, &c. 3. That the Plaintiff need not ſhew the Charter whereby he deraigned the Acquittal on the Recovery. 4. When an Acquittal is granted for one who is not Meſne, it is no Cauſe to have a Writ of Meſne but only of Covenant. 5. On an Acquittal which binds the Anceſtor by Reaſon of a Tenure in Frankalmoign, Frank-marriage, or a Deed whereby the Acquittal is granted, if the Heir has the Meſnalty, he ſhall be bound to the Acquittal by Writ of Meſne, although he has nothing by Deſcent in Fee-ſimple, from him by whom the Acquittal commences. But there it ſeems he may diſclaim in the Meſnalty; *Quære*, wherefore the Abbot had Judgment, &c. and affirmed in a Writ of Error. 15 *Aſſ.* 9.

Writ

Writ de Plegiis acquietandis.

C THE Writ *de Plegiis acquietandis* lieth, where a Man becomes Pledge or Surety (*a*) for another to pay a certain Sum of Money at a certain Day, *&c.* if the Party doth not pay it at the Day, *&c.* If he who becomes Surety be compelled to pay the Money, he ſhall have this Writ againſt him who ought to have paid the ſame. But it hath been a Queſtion whether this Writ lieth without ſhewing a Specialty; and it ſeemeth reaſonable that it be maintainable, although he have not any Specialty to prove it. For the Writ, as it ſeemeth, is given by the Statute of *Magna Charta*, *cap.* 8. which is, *Quod ſi Plegii voluerint, habeant terras & tenementa debitoris quouſque ſit his ſatisfact' de debito quod antea pro eo ſolverint.* And there is not ſpoken of any Writing made betwixt them; and if he have a Writing, then he may have Remedy thereupon by the Common Law, or by the Writ of Covenant, or Debt; and then that Statute needed not to have been made. And *Paſch.* 43 *Ed.* 3. 10. it is adjudged, that the Writ *de Plegiis acquietandis* lieth without any Specialty ſhewed thereof, and it ſeemeth good Reaſon: Becauſe the Statute makes the Tie in that Caſe, and that appeareth by the Regiſter, becauſe Writs are given for the Executors of him who became Pledge, and againſt him who was the
D Debtor, becauſe their Teſtator did not acquit his Sureties, *&c.* And this Writ is *Vicontiel*, and may be ſued in the County before the Sheriff, or in the Common Pleas by a *Præcipe*; and the Form of the Writ is ſuch:

See 122 K. 43 Ed. 3. 11.

Vide 22 Eliz Dyer 378. 2 Inſt. 20. contr.

Fitz. Pledges 9. there it was alledged, that the Cuſtom of London was ſuch, 43 Ed. 3 11.

The King to the Sheriff, &c. *We command you, that you juſtice* A. *that juſtly*, &c. *he acquit* B. *of twenty Shillings, whereof he hath put himſelf in Pledge againſt* C. *and hath not yet acquitted him, as it is ſaid, as he can reaſonably ſhew that he ought to acquit him thereof, that we may hear no more Clamour thereupon for want of Juſtice*, &c. And the Form of the Writ for the Common Pleas is ſuch: *The King*, &c. *Command* A. *that juſtly*, &c. *he acquit* B. *of one hundred Marks, whereof he hath put himſelf in Pledge againſt* C. *and hath not yet acquitted him, as it is ſaid*, &c. *and unleſs*, &c. Or thus for Executors: *Command* A. *and* B. *Executors of the Teſtament*, &c. *that juſtly*, &c. *they acquit* E. *of*, &c. *whereof he the ſaid* E. *hath put himſelf in Pledge againſt* D. *and hath not yet acquitted him*, &c.

E And if a Man become Surety for another in the Exchequer to account for him, and doth not, he ſhall have a Writ againſt him to diſcharge him of the Account; and the Writ is,

The King, &c. *Of acquitting* A. *of a certain Account, which the aforeſaid* B. *for himſelf undertook to render before our Treaſurer and Barons of the Exchequer for the Time in which he the ſaid* A. *was Bailiff of the Liberty of* Iſabel *Queen of*

(*a*) So if *A.* and *B.* are bound to *C. conjunctim & diviſim* for the Debt of *A.* yet ſeeing *B.* is not named Pledge, or *fidei juſſor* in the Obligation, this Writ does not lie for *B.* for both are Principals. *Paſ.* 22. *Rot.* 1. See *Dyer* 257. and 370. accordant; yet a Jury may find *quod poſuit ſe in pleg'* for the Defendant againſt the Debtee.

England, *our Mother, in the County of* D. *and whereof he hath put himſelf in Pledge againſt us in the Exchequer aforeſaid, and hath not yet acquitted him*, &c.

V 39Ed. 3. 9. by Knivet. Br. Pledges 22. The Plaintiff ought to have the Writ firſt againſt the Party; and if he be inſufficient, then againſt the Pledges. Mag. Charta, cap. 8.

F (*a*) And if a Man become Surety for another to pay a certain Sum of Money, or to do other Thing, &c. ſo long as the principal Debtor hath any Thing and is ſufficient, his Sureties ſhall not be diſtrained, by the Statute of *Magna Charta*: And if they be diſtrained by the Sheriff, &c. they ſhall have a ſpecial Writ upon the Statute for to diſcharge them; and the Writ ſhall be ſuch. 39 *Ed.* 3. 9. 40 *Ed.* 3. 5.

The King to the Sheriff, &c. A. *and* B. *have ſhewed unto us, that whereas they became Pledges for* C. *againſt* D. *for a certain Sum of Money in which he the ſaid* C. *was bound to the aforeſaid* D. *and the ſaid* C. *hath ſufficient whereof he can pay the Debt aforeſaid*; *nevertheleſs you have diſtrained them the ſaid* A. *and* B. *to pay the ſaid Debt to the aforeſaid* D. *And becauſe it is unjuſt that any Pledges be compelled to the Payment of a Debt, ſo long as the principal Debtors have ſufficient whereof they can render their Debt*; *We command you, that you diſtrain* C. *to pay the ſaid Money, and that you thereupon permit his Pledges to have Peace, and that you cauſe their Beaſts to be delivered without Delay, if you have taken any upon that Occaſion. Witneſs*, &c.

And it ſeemeth that this Writ lieth where a Man recovereth againſt the Sureties in the County, and the Sheriff diſtrains them to pay the Debt, where the Principal is ſufficient: But if he ſue the Sureties in the Common Pleas, where the Principal is ſufficient to pay the Debt, &c. Now whether the Sureties may plead that, and aver that the principal Debtor is ſufficient to pay it; or whether they ſhall have a Writ to the Sheriff not to diſtrain them, if the Principal be ſufficient, *quære* of theſe Caſes. And the Proceſs in the Writ is Summons, Attachment and Diſtreſs, &c. (*b*).

39 Ed. 3. 9. 40 Ed. 3. 5.

Writ of Detinue.

[138.] 13 Ed. 3. Detinue 55. 9 H. 6. 58.

A A Writ of *Detinue* lieth, in Caſe, where a Man delivereth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; then he ſhall have an Action of *Detinue* of thoſe Goods and Chattels; and ſo if a Man deliver Goods or Money put up in (*c*) Bags, or in a Cheſt, or in a Cupboard, unto another to keep, and he will not redeliver the Goods or

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(*a*) See *Mag. Chart. c.* 8. 11 *Ed.* 2. *Debt* 172. 39 *Ed.* 3. 9. yet he ſhall not have this Advantage where he binds himſelf in Covenant. 48 *Ed.* 1. 51. *cont.* and yet he is Principal, by *Perk.* 33.

(*b*) And *Note* a Judgment in this Writ, *Quod acquietur*, and Damages aſſeſſed by the Court on Confeſſion. *Dyer* 257.

(*c*) See 29 *Ed.* 3. 20. accordant, Detinue lies for a Bag and one hundred Pounds *in eadem baga*, without ſaying that it was enſealed; adjudged 18 *H.* 6. 20.

And *Note*; If Detinue be brought of a Cheſt enſealed with Charters, there, for that the Court cannot be appriſed by the Writ, whether they concern the Realty or not, Proceſs ſhall be made by *Capias*, &c. but when the Party appears, and counts, whereby it appears to the Court, that the Charters do concern the Realty, then he ſhall be permitted to appear by Attorney, &c. 29 *Ed.* 3. 19. 7 *H.* 4. 2. and 21 *H.* 6. 42. acc. with this Diverſity. See 8 *H.* 6. 30. If one bring Detinue of a Cheſt with Charters, he ought or the Money in the Bags; he to whom they ſhould be delivered ſhall have a Writ of *Detinue* for thoſe Goods, *&c.* But if a Man deliver Money not in any Bag or Cheſt, to redeliver back, or to deliver over unto a Stranger; now he to whom the Money ſhould be delivered, ſhall not have an Action of *Detinue* for the Money, but a Writ of Account; becauſe *Detinue* ought to be of a Thing which is certain; as of Money in Bags, or of a Horſe, or of a hundred Cows, or ſuch certain Things. B And this Writ may be *Vicontiel*, and ſhall be ſued before the Sheriff in the County if the Plaintiff pleaſe; or he may ſue it in the Common Pleas; and the Form of the Writ in the Common Pleas is,

If a Man bail a Thing to bail to *I. S.* he ſhall have Detin', by Priſot, yet he hath no Property till Agreement, 39 H. 6. 44. Laiton, contr. 7 H. 4. 13. Detinue was brought of a Bag with twenty Pounds, and by Martin, 4 H. 6. 1 and 2. If a Man bail twenty Pounds to rebail, Detinue lieth, and accompt. Contra, if it were, per accompt rendre. 6 Ed. 4. 11. Detinue of four Quarters of Barley, and doth not ſay in Sacks; and yet good.

The King to the Sheriff, &c. *Command* A. *&c. that*, &c. *he render to* B. *one Charter which he unjuſtly detains from him, as he ſaith, and unleſs*, &c. Or thus, *That he render to* B. *one Box with three Writings obligatory, ſigned under the Seal of the aforeſaid* B. *contained in the ſame Box.* And the Rule in the Regiſter is, *That in the Writ de Chartis reddendis, the certain Number of Charters or Writings ought to be put.* And a Man may have a Writ of *Detinue* of one Writing, and the Writ ſhall be, *Command* A. *that*, &c. *he render to* B. *a certain Writing by which* B. *hath given and granted all his Goods and Chattels, lately being in the Manor of* N. *to* I. *of* L. *which he unjuſtly detains from him*, &c. And the Form of the Writ in the County is ſuch: *The King to the Sheriff*, &c. *We command you, that you juſtice A. that juſtly*, &c. *he render to* B. *one Charter*, or *three Charters*, or *one Writing* (*a*) *obligatory* or *of Covenant*, or *Acquittance* or *Teſtament*, or *Writing, which he unjuſtly detains from him, as he ſaith, as he can reaſonably ſhew that he ought to render the ſame to him, that we may hear no more Clamour*, &c.

Note, that in 21 H. 6. 29. the Writ was Reddat bona & catalla; and declares of three Deeds; contr. if of 3 Obligations. 19 Ed. 3. Detinue 49. The Writ was Unam Chartam, and the Count of a Confirmation.

C And if a Man ſue in any Court a Plaint of *Detinue* for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may ſue a Prohibition, to prohibit them, *&c.* and to ſurceaſe, *&c.*

The King to the Bailiff of I. *of* R. *greeting: Whereas Pleas of Detinue of Charters or Writings touching Freehold ought not to be pleaded without our Writ in any Courts which have no Record, according to the Law and Cuſtom of our Realm, and* W. *without our Writ impleadeth* B. *before you in the Court of your Lord aforeſaid of* R. *for that*, "*That he the ſaid* B. *render to the aforeſaid* W. *three Charters*," *as we have received Information*; *We command you, if it be ſo, that then you do abſolutely ſuperſede that Plea from being further holden before you in*

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ought to count that the Cheſt was locked, for otherwiſe he ſhall have a general Writ of Charters. 39 *Ed.* 3. 7. *contr.* 14 *H.* 4. 30. and then if it be not a Cheſt locked, he ought to ſhew what Charters ſpecially. 11 *H* 6. 9, 49. 14 *H.* 6. 4. See 14 *H.* 6. 1. the Defendant came in by Exigent; the Plaintiff counts of a Cheſt with Charters, and of one Charter in ſpecial; the Defendant pleads to the Charter *non Detinet*, and to the Reſidue wages his Law inſtantly, and then was permitted to make an Attorney.

(*a*) *Note*; The Writ may be *Bona & catalla*, and he may count of three Tallies; but if he counts of an Obligation, the Writ ought to be ſpecial. 21 *H.* 6. 29.

the Court aforeſaid without our Writ, and that you tell the aforeſaid W. *on our Behalf, that he may obtain for himſelf our Writ of Detinue of the Charters aforeſaid againſt the ſaid* B. *if it ſhall ſeem to him expedient. Witneſs,* &c.

D And the Plea may be removed by *Pone* out of the County at the Plaintiff's Suit, without Cauſe ſhewed in the Writ; and at the Suit of the Defendant he ought to ſhew Cauſe in the *Pone:* And this Clauſe ſhall be in the End of the Writ, *Let Execution of this Writ be done, if the Cauſe be true, otherwiſe not,* &c.

38 H. 6. 24. 25 Litt.

E And if a Man find my Goods which I have loſt, I ſhall have a Writ of *Detinue* of them.

39 H. 6. 24. 9 Ed. 4. 52.

F And if a Man giveth Lands in Tail by Deed indented, and the Donee dieth without Heir, the Donor ſhall have a Writ of *Detinue* for that Part of the Deed indented which the Donee had. 18 *Ed.* 3. *Detinue* 48. 31 *H.* 6. 13. 6 *H.* 7. 3.

And ſo if Lands be given to two Men and the Heirs of one of them; if the Tenant for Life dieth, he who hath the Fee ſhall have a Writ of *Detinue* for that Deed.

7 Ed 4. 20, 26. Moiety. 18 Ed. 4. 14. the Feoffee ſhall not have this Writ againſt a Stranger.

G (*a*) If a Man make a Feoffment in Fee of his Land by Deed, yet the Feoffee ſhall not have the Charters concerning the Land, but the Feoffor ſhall keep them, if he do not give them to the Feoffee; but againſt a Stranger the Feoffee ſhall have an Action of *Detinue* for thoſe Charters which concern the Lands, if he cannot make Title by the Feoffor, or thoſe who claim Title by the Feoffor.

10 Ed. 4. 9. 4 H. 7. 10. 9 Ed. 4. 52.

H And the Heir in Tail ſhall have a Writ of *Detinue* againſt the Diſcontinuee for the Deed of Entail by which the Land was given. 18 *Ed.* 4. 15. 44 *Ed.* 3. 1. 10 *Ed.* 4. 9.

9 H. 6. 58. The Heir ought to make Title to the Land, otherwiſe the Executors ſhall have them.

I And if a Man maketh a Feoffment in Fee of the Land which is Fee-ſimple, his Heir ſhall have the Charters which concern the ſame Lands, and not the Executors of the Father. 9 *Ed.* 4. 53. 10 *Ed.* 4. 9.

K If a Man make a Leaſe for Years, and afterwards confirms his Eſtate in Fee, the Heir of the Feoffee ſhall have the Deed of the Leſſor for Years, as well as the Deed of Confirmation, becauſe that the Deed doth make the Confirmation good: And ſo of every Deed which maketh his Title, or a Releaſe, or the like, without which his Title ſhall not be ſure, and he ſhall have an Action of *Detinue* for them. 9 *Ed.* 4. 53.

19 H. 6. 41. acc. 9 Ed. 4. 52. 9 H. 6. 15. 10 Ed. 4. 9. 39 Ed. 3. Br. Chart 38.

L And the Heir ſhall have a *Detinue* of Charters, although he hath not the Land; as if I be infeoffed with Warranty, and I infeoff another with a Warranty in Fee, my Heir ſhall have a *Detinue* of that Deed by which I am infeoffed, becauſe he may have Advantage of the Warranty. 9 *Ed.* 4. 53.

10 Ed. 4. 9. 10 Ed. 4. 14. The Lord by Eſcheat ſhall have Detinue for Charters.

And if my Father be diſſeiſed, and dieth, I ſhall have a *Detinue* for the Charters, although I have not the Land, and the Executors ſhall not have the Action for them.

(*a*) See one Parcener may have the Charters which concern her Purparty only, and ſhall have Detinue thereof againſt her Siſter on a ſpecial Count. See alſo in Detinue of Charters by two, if the Defendant delivers them to one of them, though out of Court, he ſhall be excuſed againſt the other, and ſo in Dower againſt two, who plead Detinue of Charters. 21 *Ed.* 3. 8. *per Manby.*

And

M And if a Man have Goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought againſt him by him who hath Right unto the Goods; now if the Defendant, depending the Action, deliver the Goods over to whom they were bailed to him for to deliver, the ſame is a good Bar in the Action, becauſe he hath delivered them according to the Bailment made unto him. [139.]

And after Divorce made betwixt the Huſband and the Wife, the Wife ſhall have a Writ of *Detinue* for the Goods given with her in *Frank-marriage*, which ſee *M.* 35 *Ed.* 1. And the Proceſs in *Detinue* is Summons, Attachment and Diſtreſs.

For Detinue 61. 13 H. 3. Prohibition 21. See 44 C.

Writ de Recto de Cuſtodia Terræ & Hæredis.

B THE Writ *de Cuſtodia Terræ & Hæredis* lieth where the Tenant holdeth of his Lord by Knight's Service, and dieth in his Homage, and a Stranger entreth into the Land, and taketh the Body of the Heir: The Lord of whom he holdeth the Land ſhall have a Writ of *Cuſtodia Terræ & Hæredis*; and the Writ is ſuch (*a*):

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *the Wardſhip of the Land and Heir of* C. *which belongs to him the ſaid* B. *for that the aforeſaid* C. *held his Land of him by Knight's Service, as he ſaith*, &c. *and unleſs*, &c.

(*b*) Otherwiſe of the Heir of the Land. *Command* A. *that*, &c. *he render to* B. *and* C. *his Wife*, W. *the Son and Heir of* E. *the Wardſhip of whom belongs to them the ſaid* B. *and* C. *for that the aforeſaid* E. *held his Land of the aforeſaid* C. *&c.* Or thus, *Of* L. *the Father of the aforeſaid* C. *whoſe Heir ſhe is*, *by Knight's Service, as it is ſaid*, &c. *and unleſs*, &c.

C And a Writ of the Lands (*c*) only is ſuch: *Command* A. *that*, &c. *he render to* B. *the Wardſhip of one Yard-land with the Appurtenances in* R. *which belongs to him, for that* C. *held that Land of him by Knight's Service, as it is ſaid*, &c.

(*a*) And *Note*; This Writ lies againſt a Guardian by Nurture, or the Grantee of a Ward at Will. See 24 *Ed.* 3. 96. Yet it does not lie againſt the Grantee of a Ward for Years, if it be not he who firſt abates, 28 *Ed.* 3. 96. it lies againſt him who claims as Bailiff, 38 *Ed.* 3. 18. it lies againſt a Guardian for Nurture, in caſe there is not any Guardian in Chivalry; but if one ſeiſed as Guardian in Chivalry, grants him, (*i. e.* the Ward) over to *B.* to be nurtured, it does not lie againſt *B.* 12 *H.* 4. 19. *Non-tenure* of the Body is a good Plea in a Writ of Ward of the Body. 10 *H.* 6. 12.

(*b*) *Note*; This Writ ought to be brought where the Lands lie, 29 *Ed.* 3. 3. and if the Defendant has nothing in the ſame County, the Plaintiff ſhall have a *Diſtringas* (after a *Teſtatum*) into any other County, and Nonage of the Heir ſhall not be inſerted in the Writ, but in the Count, 12 *H.* 4. 16, *&c.* and if the Heir comes of Age pending the Writ, or dies, yet the Writ ſhall not abate, *Quære.* 40 *Ed.* 3. *Brief* 776. 34 *Ed.* 1. *Brief* 853. 9 *Ed.* 4. 50. 40 *Ed.* 3. 7. 21 *Ed.* 3. 42. 15 *Ed.* 3. *Brief* 680. *Perk.* 13.

(*c*) *Note*; A Writ of Ward of Lands for ſeveral Parcels of ſeveral Tenures ſhall abate, by *Rolf*; for he ought to have ſeveral Writs, 3 *H.* 6. 53. *contra* in a Writ of Ward of the Body, or of the Lands; adjudged, *Ibid.* But if it be for the Land, and alſo for the Body, and the Count is of ſeveral Tenures, the Writ ſhall abate. 46 *Ed.* 3. *Brief* 619. 17 *H.* 6. *Guard* 117. 6 *Ed.* 4. 48.

Note; The Writ is general, and therefore the Plaintiff may abridge his Demand. 14 *H.* 6. 3.

or thus, *which belongs to him the ſaid* B. *by reaſon of a Demiſe which* A. *(of whom the aforeſaid* C. *held that Land by Knight's Service) made thereof to him the ſaid* B. *as he ſaith*, &c.

And if a Man have a Wardſhip by reaſon of a Ward, and it is taken from D him, the Writ ſhall be thus: *That he render to* B. I. *the Son and Heir of* C. *the Wardſhip of whom belongs to him by reaſon of the Wardſhip of the Land and Heir of* R. *(of whom the aforeſaid* C. *held that Land by Knight's Service) being in the Cuſtody of him the ſaid* B. *as he ſaith*, &c.

(*a*) And if the Lord Paramount will ſhew a Writ of Right of Ward for E the Services and Rent, and the Heir of the Meſne, he may have a general Writ of the Land and Heir, if he will, or a ſpecial Writ thus:

Command A. *that*, &c. *he render to* B. *the Wardſhip of ten Shillings Rent, and of the Heir of* C. *which belongs to him, for that the aforeſaid* C. *held of him the Tenement from whence that Rent iſſueth, by Knight's Service, as he ſaith*, &c.

And this Writ may be ſued in the County before the Sheriff by a *Juſticies*, F and then the Writ is ſuch:

We command you, that you juſtice A. *that*, &c. *he render to* B. *the Wardſhip of the Land and Heir of* C. *which*, &c. *as he ſaith, as he can reaſonably*, &c.

And the Plaintiff may remove the ſame by a *Pone* without Cauſe ſhewed, G and the Defendant ought for to ſhew Cauſe in the *Pone*, as he ſhall do in a *Replevin*. 11 *H*. 2. *Gard* 141.

Infra I. And it appeareth by the Regiſter, that the Guardian in Socage ſhall have H the Writ of Right of Ward of the Heir alone, or of the Land alone, or of both; for the Heir thus:

The King, &c. *Command* A. *that*, &c. *he render to* B. W. *the Son and Heir of* C. *the Wardſhip of whom belongs to him the ſaid* B. *for that the aforeſaid* C. *held his Land in Socage, and the aforeſaid* B. *is next Heir of him the ſaid* C. *as he ſaith*, &c.

And there is the like Writ for the Land. And the Reaſon and Cauſe that he ſhall have this Writ ſeemeth to be, becauſe that for the Land he cannot Infra I. have other Remedy, if he cannot enter into the Land: And yet I conceive that Guardian in Socage ſhall have a Writ of Right of Ward for the Land, becauſe he is accountable unto the Heir for the ſame, which proves he hath no Right unto the Land, but as Bailiff.

And the Guardian in Socage ſhall have a Writ of Ward for Cauſe of Wardſhip, where his Guardian ought to have another Infant in Ward, becauſe he is next of Blood unto him to whom the Inheritance cannot deſcend; and the Writ is ſuch:

The King, &c. *Command* A. *that*, &c. *he render to* B. *the Wardſhip of the Land and Heir of* C. *which belongs to him the ſaid* B. *by reaſon of the Wardſhip*

(*a*) *Note*; And ſee 13 *Ed*. 3. *Gard* 38. 19 *Ed*. 3. *Gard* 40. 1 *H*. 4. 2. 11 *H*. 4. 82. 8 *Ed*. 3. 8. Ejectment, Intruſion or Right of Ward brought, ſuppoſing that he held the Rent of him, and good. See 22 *Ed*. 3. 10. he may have a Writ *de Cuſtodia Terræ & Hæredis*, and count of the Land and Rent, *&c*. See 10 *H*. 6. 12. a Suppoſal (or Demand) of Rent held good; for by *Baldw*. If the King grants a Rent-charge to *B*. to be held of him, and after grants the Services to *C*. now *B*. holds the Rent of *C*. See 14 *H*. 6. 24.

See a general Writ for the Wardſhip of the Heir of *Ceſtuy que Uſe*; and a ſpecial Count, *Dyer* 84. *a*.

of I. *the Son and Heir of* D. *(who held his Land in Socage) being in the Hand of him the ſaid* B. *for that the aforeſaid* C. *held his Land in Socage, and the aforeſaid* B. *is next Heir of him the ſaid* I. *as he faith, and unleſs*, &c.

I (*a*) And it ſeemeth, that a Writ of Right, *De communi cuſtodia*, was at the Common Law, and as well for Guardian in Socage for the Body of the Heir, as for Guardian in Knight's Service. But the Writ of Raviſhment of Ward was not at the Common Law for the Guardian in Knight's Service, but the ſame was given by the Statute of *Weſtm.* 2. *cap.* 35. And by the Equity of that Statute Guardian in Socage ſhall have a Writ of Raviſhment of Ward as well as Guardian by Knight's Service; and by the ſame Reaſon he ſhall have a Writ of Right of Ward at the Common Law, as Guardian in Socage ſhall have.

1 Ed. 3. 20. 26 Ed. 3. 65. 25 Ed. 3. 52. 17 R. 2. Brief 634. N. B. 95. 3 Ed. 2. Gard 133.

K And if the Meſne hath two Daughters, one within Age, and the other of full Age, and dieth; and the Lord hath the Wardſhip of her within Age, and afterwards the Tenant dieth, his Heir within Age, now the Lord Paramount, and the Siſter of full Age who is one of the Meſnes, ſhall have a Writ of Right of Ward in this Form:

12 R. 2. Gard 106.

Command A. *&c. that*, &c. *he render to* B. *one of the Daughters and Heirs of* W. *and to* P. *of* E. *the Wardſhip of the Land and Heir of* R. *which belongs to them the ſaid* B. *and* P. *for that the aforeſaid* R. *held his Land by Knight's Service of the aforeſaid* B. *and of* M. *the Siſter of the ſaid* B. *the other Daughter and Heir of him the ſaid* W. *within Age, and being in the Wardſhip of the aforeſaid* P. *as they ſay, and unleſs*, &c.

L And it appeareth in the Regiſter, that the Writ *de Ejectione Cuſtodiæ* lieth for the Land, and for the Heir together, for the Writ is ſuch (*b*):

11 H. 4. 64, 65. If the Ejectment of Ward be brought of Land only, the Party muſt ſhew the Certainty of the Land; but if it be of the Body and Land, the Writ general, de terris & hæred. is good. 22 Eliz. Dyer 299. It lieth not but of Land only.

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. *to ſhew wherefore, whereas the Cuſtody of the Land and Heir of* C. *until the lawful Age of the Heir aforeſaid belongs to him the ſaid* A. *for that the ſaid* C. *held his Land of him by Knight's Service* (*c*), *and he the ſaid* A. *was a long while in peaceable Seiſin of the ſame Wardſhip, the aforeſaid* B. *forcibly ejected him the ſaid* A. *from that Wardſhip, the ſaid Heir being within Age, as he ſaith: And have there the Summoners and this Writ*, &c.

[140.] If he who ejects aliens to another, yet he may have this Writ againſt him who ejected him, and yet the Party ſhall recover Land to his Writ, 12 H. 4. 10. by Hankford; ſo if one eject the Ejector, he who was firſt ejected ſhall not have this Writ, no more than one ſhall have Treſpaſs, *&c.* againſt the ſecond Treſpaſſor. 39 Aſſ. 2.

(*a*) And he ſhall account to the Heir for the Damages which he recovers, and for that the Deforceor ſhall be diſcharged againſt the Heir. 27 *Ed.* 3. 79. See *Kelw.* 131.

(*b*) See the contrary adjudged, 14 *Ed.* 3. *Brief* 316.

(*c*) Yet it is not ſufficient for the Defendant to traverſe the Tenure, *&c.* without ſhewing Cauſe of Juſtification. 10 *H.* 6. 20. *per Paſton.*

Note; If the Bailiff of *A.* ejects *B.* to the Uſe of *A.* and afterward *A.* agrees and takes the Profits and aliens, he ſhall be ſaid the Ejector, and Ejectment *de Gard* lies againſt him, and the Plaintiff ſhall recover the Ward and his Damages. 38 *Ed.* 3. 18. Ejectment *de Gard* brought againſt two, the Death of the one ſhall not abate the Writ. 12 *H.* 4. 10. The Tenant of the Ward ought to be named in the Writ. 2 *Ed.* 2. 779. *Quære.*

(*a*) Another Writ for the Land only, where he hath the ſame by Grant of the Guardian, thus: A

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. *wherefore, whereas the Wardſhip of one Yard-land with the Appurtenances in* D. *until the lawful Age of* I. *Son and Heir of* C. *belongs to him the ſaid* A. *by reaſon of the Demiſe which* R. *of whom the aforeſaid* C. *held his Land by Knight's Service, made thereof to him the ſaid* A. *as it is ſaid, and the ſaid* A. *was a long while in full and peaceable Seiſin of the ſame Wardſhip, he the ſaid* B. *forcibly ejected the ſaid* A. *from the Wardſhip aforeſaid, the aforeſaid Heir being within Age, as he ſaith*, &c. (*b*).

Another Writ when a Man hath a Ward of the King's Grant, and he granteth the ſame over unto another, then thus, as above: B

By reaſon of the Demiſe which C. *(who had that Wardſhip of the Commiſſion of Lord* Edward *lately King of* England, *our Predeceſſor, of whom the aforeſaid* R. *held his Land by Knight's Service) made thereof to him the ſaid* B. *&c. and the ſaid* B. *&c.* Or thus: *If* E. *ſhall make you ſecure*, &c. *then ſummon* B. *as well to anſwer* (*c*) *us as the aforeſaid* E. *&c. wherefore, whereas we committed to the aforeſaid* E. *the Wardſhip of the Lands and Tenements which were* I.'s *of* C. *deceaſed, who held of us in Chief, and which were in our Hand by reaſon of the Minority of* P. *Couſin and Heir of the aforeſaid* I. *to have the ſame with all Things belonging to that Wardſhip, until the lawful Age of the aforeſaid Heir, and he the ſaid* E. *was a long while in full and peaceable Seiſin of the ſaid Wardſhip by reaſon of our ſaid Commiſſion, he the ſaid* B. *(the ſaid Heir being within Age) forcibly ejected the ſaid* E. *from the Wardſhip of one hundred Shillings Rent with the Appurtenances in* H. *as he ſaith*, &c.

13 H. 4. 17. (*d*) And the Guardian in Socage ſhall have a Writ *de Ejectione Cuſtodiæ*, as appeareth by the Regiſter; and by the like Reaſon, as well as he ſhall have a Writ of Raviſhment of Ward for the Body, he ſhall have a Writ of Ejectment of Ward for the Land (*e*). C

And if a Man have the Patronage of an Abbey or Priory, and hath Right to have the Temporalties during the Time of Vacation of them, if he have the Poſſeſſion thereof, and be ouſted, he ſhall have a Writ *de Ejectione Cuſtodiæ*; and the Writ ſhall be ſuch: D

To ſhew wherefore, whereas the Cuſtody of the Priory of B. *in the Vacations of the ſame Priory belongs to him the ſaid* A. *and he the ſaid* A. *was a long while in full and peaceable Seiſin of the ſaid Cuſtody in the laſt Vacation of the ſaid Cuſtody in the laſt Vacation of the ſaid Priory, the aforeſaid* B. *forcibly ejected the ſaid* A. *from that Cuſtody.*

And by the Regiſter it is ſaid, that the Writ of Right may be ſued *de Cuſtodia Priorat'* in Time of Vacation, *&c.* thus:

(*a*) *Note*; The Writ *de Cuſtod. Terræ & Hæredis* is general, but *de Cuſtod. Terræ tantum* is ſpecial. 11 *H.* 4. 64.

(*b*) *Et blada ſua cepit, &c.* abated the Writ, becauſe it included Treſpaſs. 11 *Ed.* 3. *Brief* 471.

(*c*) He ſhall have a general Ejectment of Ward, and not a ſpecial Writ on the Caſe, which concludes *in contemptum noſtrum, &c.* and ſuch a Writ ſhall abate. 11 *H.* 4. 65.

(*d*) And ſo is 26 *Ed.* 3. 65. 13 *H.* 4. 17. and *Note*; it is there held to be no Iſſue, to ſay that the Anceſtor did not hold of him whom the Plaintiff ſuppoſes to be Lord.

(*e*) See *contra* 16 *Ed.* 3. *Waſt* 100.

The King, &c. *Command*, &c. *that*, &c. *he render to* B. *the Cuſtody of the Priory of* N. *&c.*

(*a*) And that is grounded upon the Statute of *Magna Charta*, *cap.* 6. *Quod omnes Patroni Abbatiarum*, *&c.*

And there is another Writ of Ward for the Body, which is called a *Writ of Raviſhment of Ward*; and that Writ lieth as well for Guardian in Socage, as for Guardian in Knight's Service.

E And if a Man have one in Ward, becauſe his Anceſtor held of him by Knight's Service, and the Ward is raviſhed and taken from him, he ſhall have the Writ of Raviſhment of Ward.

F (*b*) And ſo ſhall the Grantee of the Ward, or his Executors, if he be taken from them; and the Form of the Writ for the Lord of whom the Anceſtor of the Ward held, is ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *that he be before our Juſtices*, &c. or *before us (ſuch a Day) whereſoever*, &c. *to ſhew wherefore he raviſhed and carried away* I. *the Son and Heir of* C. *found at* N. *being under Age*, *the Marriage of whom belongs to him the ſaid* A. *againſt the Will of him the ſaid* A. *and againſt our* (*c*) *Peace*; *and in the mean time do you diligently inquire where he the Heir is in your Bailiwick*, *and take him whereſoever he ſhall be found*, *and keep him ſafely and ſecurely*, *ſo that you may have him before our Juſtices*, or thus, *before us*, &c. *at the aforeſaid Time*, *to be reſtored to which of them the ſaid* A. *and* B. *he ought to be reſtored*: *And have*, &c.

(*d*) And if the Heir be raviſhed and carried from County to County, then the Writ ſhall be thus:

The King to the Sheriff, &c. A. *hath complained to us*, *that* B. *hath raviſhed* C. *the Son and Heir of* L. *being under Age*, *and being in his Wardſhip at* E. *in the County of* Lincoln, *and hath carried him from that County unto* I. *in your County*, *againſt the Will of him the ſaid* A. *and againſt our Peace*; *And therefore we command you*, *that you take the ſaid Heir whereſoever you ſhall find him in your Bailiwick*, *and keep him ſafely and ſecurely*, *ſo that you may have him before our Juſtices at*, &c. *(ſuch a Day) which Day the ſaid* A. *hath*, *againſt the ſaid* B. *to be reſtored to whom of Right he ought to be reſtored*: *And have*, &c.

G And the Form of the Writ for the Guardian in Socage is thus:

The King, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *&c. to ſhew wherefore*, *whereas the Wardſhip of the Land and Heir of* C. *until the lawful Age of him the ſaid Heir*, *belongs to him the ſaid* A. *becauſe that the aforeſaid* C. *held his Land* (*e*) *in Socage*, *and the aforeſaid* A. *is nearer to the Heir of him*

(*a*) See that a Writ of Treſpaſs for a Ward was at Common Law, and at this Day, it is in the Plaintiff's Election to purſue the Statute or the Common Law, as by a Writ of *Oyer* and *Terminer*. 29 *Ed.* 3. 37. adjudged. See 29 *Aſſ.* 35.

(*b*) *Note*; In Raviſhment of Ward, the Defendant may traverſe, but not without making a Title in himſelf, when put out of Poſſeſſion. See 9 *H* 6. 10, 61. otherwiſe if he pleads only to Writ without ſaying, *Et in Cuſtodia ſua exiſten'*. 9 *H.* 6. 6.

(*c*) Without ſaying *vi & armis*, *i. e.* if the Writ be *cujus Maritagium ad ipſum pertinet ratione Dimiſſionis*; *contra* if it be according to the Statute, there the Writ is good. 17 *Ed.* 3. *Brief* 823.

(*d*) So *Note*; The original Writ ought to be brought in the County where the Raviſhment is ſuppoſed, and not in the County to which he is eſloigned, and this Writ ſhall iſſue to the Sheriff. *Dyer* 289. *Fitzh.* Caſe; ſee the Stat.

(*e*) Without ſaying *cujus Maritagium ad ipſum pertinet*, as 7 *R.* 2. *Brief* 634. and yet if he be married by the Raviſher, there ſhall be a Recovery of the Value, and he ſhall be accountable to the Heir for the ſame. 26 *Ed.* 3. 65.

the ſaid C. *and he the ſaid* A. *was a long time in full*, &c. *with Force and Arms he took and carried away the aforeſaid* W. B. *the Son and Heir of the aforeſaid* C. *found at* N. *being under Age, and in the Wardſhip of him the ſaid* A. *and* [141.] *other Wrongs to him did, to the great Damage of him the ſaid* A. *and againſt our Peace: And have there the Names of the Pledges and this Writ. Witneſs*, &c. Or thus: *With Force and Arms raviſhed, and hath married him without the Licence and Will of him the ſaid* A. *to the great Damage*, &c.

And if the Infant be in the Cuſtody of the Lord, and during his Nonage A he enter upon the Lord, and ouſt him of the Land which he ought to have in Ward, then the Lord ſhall have a Writ of Intruſion of Ward againſt him; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, B &c. I. *the Son and Heir of* C. *to ſhew wherefore, whereas the Wardſhip until the lawful Age of the aforeſaid Heir belongs to him the ſaid* A. *by reaſon of a Demiſe which* L. *of whom the aforeſaid* C. *held his Land by Knight's Service, thereof made to the aforeſaid* A. *and whereof* A. *was in full and peaceable Seiſin, the aforeſaid* I. *being under Age, intruded himſelf into the Land aforeſaid, and detains from the aforeſaid* A. *that Wardſhip, to the great Damage and Grievance of him the ſaid* A. *&c. as he ſaith*, &c. *And have*, &c. Or thus: *To ſhew wherefore, whereas the Wardſhip of the Manor of* T. *with the Appurtenances, until the lawful Age of the aforeſaid* I. *did belong to him the ſaid* A. *by reaſon of a Demiſe which* B. *(to whom* H. *of whom, and* Alice *his Wife, the aforeſaid* C. *held that Manor by Knight's Service) made thereof to the aforeſaid* A. *&c. and the ſaid* A. *being in full*, &c. *the aforeſaid* I. *while he was under Age, intruded himſelf into the Manor aforeſaid, and hath hitherto detained from the aforeſaid* A. *that Wardſhip, to his Damage, as he ſaith: And have*, &c.

And the Writ lieth where the Tenant holdeth of a Man and his Wife by C Knight's Service in the Right of the Wife, and the Tenant dieth, his Heir within Age, and the Huſband granteth the Wardſhip of the Land unto another, who granteth it over to another, upon whom the Heir intrudeth, *&c.*

2 H. 7. 9.
31 Aſſ. 26.
Br. Aſſiſe 321.

And if the Lord have the Cuſtody of the Heir within Age, and tender him D a convenient Marriage, and he refuſeth it, and intrudeth, then the Lord ſhall have a Writ againſt him for to recover the (*a*) Value of the Marriage, and alſo to recover the Land, which ſhall be ſuch:

Vide 8 Eliz.
Dyer 255.
the Tender
traverſed.

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. *&c. to ſhew wherefore, whereas the Marriage of the aforeſaid* B. *belongs to him the ſaid* A. *for that the aforeſaid* B. *held his Land of him by Knight's Service, and he the ſaid* A. *oftentimes tendered to the aforeſaid* B. *while he was under Age in his Wardſhip, a competent Marriage without Diſparagement, according to the Form of the Statute thereof provided by the Common Council of our Realm, he the ſaid* B. *refuſing that Marriage (the aforeſaid* A. *not being ſatisfied for his Marriage) hath intruded himſelf into the Lands and Tenements, and for his Marriage denies*, &c. *to the great Damage*, &c.

(*a*) The Succeſſor brought ſuch a Writ, ſuppoſing the Tenure of a Tender by an Intruſion in the Time of his Predeceſſor, without any Agreement, *&c.* with the Abbot himſelf that was Plaintiff; and ruled good, *per Cur.* 11 *H.* 4. 82. But *Note*; It ſeems better if the Writ ſuppoſes that no Agreement was made with him or his Predeceſſor.

And *Note*; One may have an Ejectment of Ward againſt the Heir himſelf. 32 *Ed.* 3. *Brief* 347. *Quære Bro. Juriſdict.* 23. 11 *H.* 7. 9. and 31 *Aſſ. pl.* 26. *contra* 7 *H.* 6. 12. 21 *Ed.* 4. 43.

And

E And it appeareth by the Writs abovefaid, That the Guardian ſhall have a Writ of Intruſion of Ward againſt the Heir as well at his full Age, as during his Nonage. 24 H. 3. Ward 149.

F There is another Writ *De valore maritagii* for the Lord or his Executors againſt the Heir, without ſpeaking of any Intruſion made by the Heir into the Land. And the Writ is ſuch:

The King to the Sheriff, &c. *If* A. &c. *ſhall make you ſecure*, &c. *then ſummon*, &c. *wherefore*, (*a*) *whereas the Marriage of him the ſaid* L. (*&c.* as in the laſt Writ, until) *of our Realm, the aforeſaid* L. *refuſed that Marriage, and when he came to his full Age, refuſed to ſatisfy the aforeſaid* A. *for the ſame Marriage, and yet unjuſtly refuſeth, to the great Damage*, &c. *and againſt the Form of the Statute*, &c.

G (*b*) And if the Heir be in the Lord's Cuſtody, and doth marry himſelf within Age, without the Aſſent of the Lord, and when he cometh of full Age, he entreth upon the Lord, and puts him out of the Land, then the Lord ſhall have a Writ of Forfeiture of Marriage againſt him, for the double Value of the Marriage. And the Writ ſhall be ſuch:

H (*c*) *If* A. *ſhall make you ſecure*, &c. *then ſummon* C. *the Son and Heir of* D. *that he be before our Juſtices*, &c. *to ſhew wherefore, whereas the Marriage of him the ſaid* C. *together with the Wardſhip of one Acre of Land with the Appurtenances in* N. *belong to him the ſaid* A. *by reaſon of a Demiſe which* L. (*who had that Wardſhip of the Demiſe of* F. *to whom* G. *demiſed it, of whom the aforeſaid* D. *held his Land by Knight's Service*) *made thereof to the aforeſaid* A. *and he the ſaid* A. *oftentimes tendered to the aforeſaid* C. *while he was under Age and in his Wardſhip, a competent Marriage without Diſparagement, according to the Form of the Statute thereof provided by the Common Council of our Realm, he the ſaid* C. *refuſing that Marriage, hath married himſelf without the Licence and Will of him the ſaid* A. *and hath intruded himſelf into the Lands aforeſaid* (*the aforeſaid* A. *not being ſatisfied for the Marriage aforeſaid*) *and denies to ſatisfy him the ſaid* A. *for the ſaid Marriage, to the great Damage of him the ſaid* A. *and againſt the Form of the Statute aforeſaid, as he ſaith: And have*, &c. *and ſummon*, &c. *Witneſs*, &c.

I And that Writ lieth where the Lord granteth the Wardſhip of the Heir and Land of his Tenant unto *F.* who granteth the ſame Heir and Land unto *L.* who granteth the ſame over unto the ſaid *A.* the now Plaintiff, who tendreth Marriage unto *C.* and he refuſeth the ſame, and marrieth himſelf during his

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(*a*) *Note*; This Writ does not lie till the Heir be out of Ward by full Age, or by making him Knight; ſo that if the Heir dies before ſuch full Age, *&c.* the Value is loſt. 6 *Co.* 75.

(*b*) To entitle one to have the double Value, ſee 16 *Ed.* 3. *Action ſur le Stat.* 14. but he need not count, ſo 14 *Ed.* 3. *ibid.* 16, 17.

(*c*) See 16 *Ed.* 3. *Action ſur le Stat.* 14. 18 *Ed.* 3. 18. and yet the Statute of *Merton*, *cap.* 6, does not give an Action but only a Retainer. 2 *Ed.* 3. *Action ſur le Stat.* 23. that he has Election, and if he chooſes this, he ſhall not retain the Land. 33 *Ed.* 3. *ibid.* 31. but ſee *contr.* *Temp. Ed.* 1. *ibid.* 36.

Note; He ought to ſhew in his Count, that the Feme was tendred, 28 *Ed.* 3. 92. and there, though the Lord after the Tender, *&c.* renders on the Land, and accepts the Relief of the Heir, yet he ſhall have the Forfeiture of the Marriage. Alſo, although the Heir be married by the Raviſher, the Lord has his Election to have either Raviſhment of Ward or Forfeiture of the Marriage. 3 *Ed.* 2. *Action ſur le Stat.* 27.

Note for Form of the Writ, 14 *Ed.* 3. *ib.* 17.

Nonage, and at his full Age entreth into the Land, the Marriage not ſatisfied, *&c.*

And otherwiſe for the Lord againſt the Tenant himſelf, thus: K

If A. *ſhall make you ſecure*, &c. *ſummon*, &c. B. *the Son and Heir of* C. *that he be before our Juſtices*, &c. *to ſhew wherefore, whereas the Marriage of the aforeſaid* B. *belongs to him the ſaid* A. *for that the aforeſaid* C. *held his Land of him by Knight's Service, and he the ſaid* A. *hath frequently tendered a competent Marriage without Diſparagement*, &c. *to the aforeſaid* B. *while he was under Age, he the ſaid* B. *hath refuſed to admit that Marriage, and hath married himſelf without the Licence and Will of the aforeſaid* A. *to the great Damage*, &c.

L And the Lord may have ſuch a Writ of Forfeiture of Marriage againſt [142.] the Heir of the Meſne, if he marry during his Nonage, and enter into the Meſnalty, or take the Rent and Services of the Tenant Paravail, and the Writ ſhall be general, as if he were Tenant Paravail, *&c.* not making Mention of the Meſnalty.

A If a Man be Tenant in Tail, the Reverſion to the King, and the King doth licenſe him to alien in Fee, and to take back an Eſtate unto himſelf and his Wife in Tail, the Remainder to his right Heir, and he maketh ſuch Feoffment, and taketh back an Eſtate unto himſelf and his Wife in Tail, the Remainder to his right Heirs, and dieth, his Heir within Age; the King, notwithſtanding his Licence, ſhall have the Wardſhip during the Life of the Wife, for that the Licence doth not give him Power to alien the King's Reverſion, *&c.* And when the Reverſion cannot be diſcontinued, the Eſtate-Tail cannot be diſcontinued, but by his Death the Heir may enter into the Land, and ſo the King may in his Right (*a*).

Vide Dyer 8. & 12 & 132. b. C. 2 part 92. 11 H. 7. 19. 34 Ed. 1. pl. 129. 36 Ed. 3. Gard 9.

B (*b*) If a Man have Lands for Life, the Remainder in Fee unto another, and he in the Remainder dieth, his Heir within Age, he ſhall not be in Ward during the Life of the Tenant for Life; becauſe that during his Life, the Tenant for Life is Tenant to the Lord Paramount, although the Land be holden by Knight's Service. And the Guardian ſhall put out the Termor who holdeth for Years of the Leaſe of his Tenant.

1 Ed. 3. 3. 36 H. 8. Leaſes 18. contr.

C (*c*) And the Statute of *Marlebridge* in a Manner proveth he may ſo do. And there are many old Books to prove the ſame by Judgments that are given; and it ſeemeth reaſonable that it ſhould be ſo, by the ancient Title which the Lord hath, when he reſerved ſuch Services upon his Feoffment, to have the Wardſhip if he dieth, the Heir being within Age.

C. 3 part 35. 41 Ed. 3. 18. Br. War. 20.

D (*d*) And if the Tenant be diſſeiſed and dieth, his Heir being within Age, the Lord ſhall ſeize the Ward, and enter into the Land upon the Diſſeiſor in the Right of the Heir.

33 H. 6. 16. Priſot.

E (*e*) But if the Tenant doth infeoff his Son during his Nonage, who doth Homage unto the Lord, and afterwards the Tenant dieth, the Heir within

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(*a*) *Stamf. Prærog.* 56. 40 *Aſſ. pl.* 36. 21 *Aſſ. pl.* 15. 21 *Ed.* 3. *pl.* 58.

(*b*) So if Lands are leaſed to the Baron and Feme, and to the Heirs of the Baron who dies. 28 *Ed.* 3. 93.

(*c*) 5 *H.* 7. 3, 6. 14 *H.* 7. 22. 15 *H.* 7. 7. 33 *H* 6. 42.

(*d*) *Vide infra* K.

(*e*) 36 *Ed.* 3. *Gard* 11. 4 *Ed.* 3. 20. 33 *H.* 6. 16. *contr.* 31 *Ed.* 3. *Gard* 55, 255. *Mag. Chart. c.* 3. 3 *Ed.* 2. *Avowry* 189. 4 *Ed.* 3. 20. But (F.) ſee 27 *Ed.* 3. 19. 8 *Ed.* 2. 96. 18 *Ed.* 3. 29. *Quære* 97. 8 *H.* 3. *Ward* 139. *contra.*

Age, the Lord ſhall not have the Wardſhip of him, becauſe he hath accepted him for his Tenant in the Life of the Father. But it appeareth by *Magna Charta*, That the Lord ſhall take Homage of the Heir before he have the Wardſhip of him; but that is after the Death of the Anceſtor, and not in the Life of the Anceſtor, and ſo was the Law taken in old Books.

F If a Man purchaſe Lands by Feoffment which are holden ſeverally of divers Lords by Knight's Service, and afterwards dieth, his Heir within Age, that Lord who firſt getteth the Ward ſhall have him, becauſe there is no Priority; but if he purchaſe Lands which are holden by Knight's Service of one Lord, and afterwards purchaſe Lands by Knight's Service of another Lord, and dieth, his Heir within Age, that Lord ſhall have the Wardſhip of the Heir of whom the Land firſt purchaſed was holden, for he holdeth of him by the more (*a*) ancient Feoffment and Priority, than he holdeth of the other Lord.

14 Aſſ. Br. Aſſiſe 192. Com. 133. 36 Ed. 3. Gard 11. 31 Ed. 1. Gard 155. Br. Fealty. Good Bar in Forfeiture of Marriage, in 7 Ed. 2. Action ſur Stat. 31. So of Land in Uſe, 21 H. 8. B. Prerogative 92. C. 5 Part 36.

And if a Man hold of the King by Poſteriority, and holdeth Lands of another Lord by Priority, and afterwards dieth, his Heir within Age, the King ſhall have the Wardſhip of his Body by his Prerogative, not having Regard to the Priority or Poſteriority.

And if a Man hold of the King by Poſteriority, and of (*b*) another Lord by Priority, and afterwards the King granteth the Seigniory unto the Queen for Life, and afterwards the Tenant dieth, his Heir within Age, the Queen ſhall have the Wardſhip of the Body, not having Regard unto the Poſteriority, becauſe that the Reverſion of the Seigniory doth remain in the King. 24 *Ed.* 3. 66. *Stamf. Prærog.* 11.

Quære, If Plenarty be a good Plea againſt the Queen, where the Reverſion is in the King. 18 Ed. 3. 13. Stanford, Prerogative 13.

But if the King hath granted the Remainder of the Seigniory in Fee unto a Stranger, then it ſeemeth the Queen ſhall not have the Wardſhip of the Body, for the Seigniory of Poſteriority, *&c.* and Priority is changed by the Feoffment of the Tenant of the Land. And if he make a Feoffment in Fee of the Land which he holdeth by Priority, and take back an Eſtate again of

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(*a*) Although he comes to the Seigniory or Honour of which the Tenement is held by Eſcheat or Purchaſe, the King ſhall have the Ward, notwithſtanding the Priority, becauſe he is the Chief Lord, *de quo omnia Tenementa tenentur.* See *Bract.* 87. 5 *Ed.* 3. 4. adjudged. 24 *Ed.* 3. 31, 65. adjudged. See 12 *H.* 4. 25.

(*b*) See 21 *Ed.* 3. 41. but more fully *F. Prærog.* 16. *A.* holds of *B.* by Priority, and of the King as of the Honour of *Berkhampſted* by Poſteriority; the King grants the Honour of *B.* to Prince *E.* whom he creates by the ſame Letters Patent Duke of *Cornwall, Habend' eidem Duci & ipſius & hæredum ſuorum Reg' Angl' filiis primogenitis & dicti loci ducibus in Regno Angliæ hæreditario ſucceſſoribus, &c. ita quod ab eodem Ducatu nullatenus ſeparentur, vel aliquibus aliis quæ dicti loci Ducibus per nos vel hæredes noſtros donentur, &c.* with a Proviſo, that if any happen to take by Force of the ſaid Grant, *&c. Quod dictus Ducatus ad nos vel hæredes noſtros Reges Angliæ revertantur retinend' quouſq', &c. de hujuſmodi filio apparen', &c. A.* dies, his Son within Age, and it was demurred and doubted in Law, who ſhould have the Ward; and by *Wilby*, the Prince ſhall have it; and for this ſee 24 *Ed.* 3. 31, 38, and 65. accordant. But there the Caſe was on a Grant for Life to the Queen, Remainder to the Prince and his Heirs Males Kings, *&c.* and ſo there was a Reverſion in the King, and therefore it ſeems by that Book, that the King ſhall have his Prerogative; *contra*, if the Remainder had been limited over in Fee-ſimple. See 12 *Ed* 3. *Prærog.* 23. And it ſeems by 24 *Ed.* 3. 66. that if a Seigniory be granted to *A.* for Life, Remainder to the King in Fee; the Tenant for Life ſhall have the Prerogative, becauſe he holds in Right of him who has it.

the

If he make a Feoffment and this done to his Uſe; quære if the Priority be gone. 2 Ed. 2. Fitz. Gard 2. acc'. 3 Ed. 3. Gard 19. 14 Ed. 3. Gard 37. 33 Ed. 3. Gard 12. cont. 11 Ed. 3. 115. This not Law. 21 Ed. 3. Gard 41.

the ſame, now he holdeth the ſame Land of that Lord by Poſteriority, whereas he held it before of him by Priority. But if the Lord of whom the Tenant holdeth by Priority, grant his Seigniory unto another in Fee, and take back again an Eſtate in the Seigniory to him in Fee, &c. yet the Tenant holdeth of him by Priority, as he held before, becauſe the Pleading of Priority is to ſay, that he holdeth of ſuch a Man and his Anceſtors, or of thoſe whoſe Eſtate he hath in the (*a*) Seigniory *per antiquius Feoffamentum*, &c. than he holdeth the other Land, ſo that the Feoffment of the Land doth make the Priority. And if the Tenant do (*b*) forejudge the Meſne, of whom he holdeth by Priority, &c. yet he ſhall hold by Priority of the Lord Paramount, as he held of the Meſne before, &c.

G The Mayor and Aldermen and Chamberlains, by the Cuſtom of *London*, ſhall have the Cuſtody of any Orphan in the City, and if they commit the Cuſtody of ſuch Orphan to another, he ſhall have a Writ of Raviſhment of Ward againſt him who taketh the Ward out of his Poſſeſſion.

H And if the Guardian marry the Heir after the Age of fourteen Years, and afterwards the Heir is taken by a Stranger, the Guardian ſhall not have a Writ of Raviſhment, &c. becauſe he hath had the Effect of his Marriage.

I If a Man have a Ward in the Right of his Wife, although the Wife dieth, yet the Huſband ſhall have the Ward, becauſe it is a Chattel veſted in him. 10 *H.* 6. 11. 30 *Ed.* 3. 6.

Tenant in Tail grants his Eſtate of a Manor unto which an Advowſon is appendant, the Church void; Tenant in Tail dieth, the Grantee ſhall have the Advowſon. So if the Church void during the Term, and the Term expire. 9 *Ed.* 3. *Quare impedit* 18.

K (*c*) Where the Tenant maketh a Feoffment by Colluſion, and the Lord accepteth the Services of the Feoffee, then he ſhall not have the Wardſhip of the Tenant's Heir, nor ſhall overſee the Colluſion.

[143.]

And if a Man at this Day maketh a Feoffment in Fee to his Uſe, and the Lord accept the Services of the Feoffee; yet if the Feoffor who hath the Uſe dieth, his Heir within Age, the Lord ſhall have the Wardſhip of his Heir by the Statute of 4 *H.* 7. *cap.* 17. (*d*)

But the Ceſtuy que Uſe of a Seigniory ſhall not have Guard, for the Feoffees before 27 *H.* 8. were Lords.

(*a*) See *Raſt. Entr.* 387. *Prædict'* A. the Father of the Infant & *anteceſſores ſui* & *illi quor' Stat' ipſi habuerunt in eodem Manerio de* S. *tenuer' idem Maner' de* S. *de eodem* G. & *anteceſſoribus ſuis, quorum Statum illi habuerunt in Dominico ejuſdem Manerii de* S. *per ſervicium militare per antiquum Feoffament'*, &c. See 3 *Ed.* 3. *Gard* 19. adjudged, accordant 11 *Ed.* 3. *Gard* 115. *per Shard.* 21 *Ed.* 3. 41.

(*b*) This ſeems not Law, for when the Tenant forejudges the Meſne, the Services due to the Meſnalty are gone, and he is become Tenant to the Lord *de novo*, ſo that he ſhall hold of the Lord by the Services of the Meſne; ſo that if the Tenant ought to hold in Chivalry, and the Meſne in Socage; now the Tenant himſelf ſhall hold in Socage of the Lord, and ſo it is agreed, that by the Forejudger he is now Tenant to the Lord Paramount by Poſteriority. 11 *Ed.* 3. *Gard* 115. in a Writ of Ward by the Biſhop of *Exon*, againſt *R. B.* for the Body of *W.* Son of *B. de Bereelay*. See 33 *Ed.* 3. *Gard* 12. *per Shard.*

(*c*) 31 *Ed.* 1. *Gard* 33, 155. 12 *Ed.* 3. *Gard* 33. 36 *Ed.* 3. *Gard* 11. 33 *H.* 6. 16. 29 *Ed.* 3. 48. 8 *Ed.* 3. 284.

(*d*) And thereon he ſhall have a general Writ and a ſpecial Count. *Dyer* 8, 9.

A And if a Man leaſe Lands for Term of Life, the Remainder to the Huſband and Wife in Tail, the Remainder in Fee to the Heirs of the Huſband, and the Huſband and Wife die, his Heir within Age being Tenant for Life, his Heir ſhall not be in Ward (*a*).

B If the King's Tenant giveth Lands in Tail without the King's Licence, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in Tail dieth, his Heir within Age, the King ſhall have the Wardſhip of him, as ſeemeth by the Statute of 34 *Ed.* 3. *cap.* 15. And this Acceptance of the Services ſhall not conclude the King; for the King ſhall not be concluded, *&c.* if he have Matter to ſhew which may ſerve him. And yet *in Anno* 4 *H.* 6. it is adjudged contrary; and therefore *quære* the Law in that Caſe.

27 H. 8. 26. Fitz herbert contra. Vide 34 & 35 H. 8. Dy. 54. 4 H. 6. 19.

C And the Lands of the Wife within Age ſhall be in Ward, although her Huſband be of full Age. *Litt.* 22. *b.*

And if a Woman be paſt the Age of fourteen Years at the Time of the Death of her Anceſtor, ſhe ſhall not be in Ward.

N. B. 96. b. 26 H.

D A Committee of the King ſhall not have a Ward by reaſon of the Ward, but the King ſhall have the ſame, becauſe the King remaineth Guardian, *&c.* and the Heir ſhall ſue Livery. 37 *H.* 8. 9. 39 *Ed.* 3. 8.

35 H. 6. Gard 14, 90.

E (*b*) If a Biſhop have Title to have a Ward, and doth not ſeize him in his Life-time, and dieth, the Succeſſor ſhall have that Ward, and ſhall ſeize him, *&c.* Otherwiſe it ſeemeth if the Biſhop had ſeized him. See *Dyer* 277. *contr.*

2 H. 4. 19. ac. 40 Ed. 3. 14. cont. 10 Eliz. Dyer 277. the Executors of the Predeceſſor ſhall have the Ward.

F If the Heir Female be married by the Lord before her Age of fourteen Years, and afterwards the Huſband dieth, the Heir Female ſhall not be married again by the Law, *&c.* And by that ſame Reaſon he ſhall not have a Writ of Raviſhment of Ward, if another Man do raviſh her afterwards. *Bro. Quare imp.* 47. *Litt.* 23.

G (*c*) If the Grandfather have a Son, and the Son taketh a Wife, and have Iſſue, and dieth, the Mother of the Iſſue ſhall have the Wardſhip of the Child which is her own Child, and not the Grandfather, although the Iſſue may have the Land which ought to deſcend to him by the Grandfather, and although that the Mother ſhall not have the Land. *Hill.* 31 *Ed.* 3. *Bar.* 257. *Brief* 327. 30 *Ed.* 3. 17.

Lit. 25.

C. 6 Part 22. b.

(*a*) But after his Death he ſhall be in Ward, adjudged 24 *Ed.* 3. 33. for the Heir in ſuch Caſe is in by Deſcent, and therefore if he becomes Tenant in Demeſne or by Fiction of Law, as by Reſceit or Aid Prayer, he ſhall have his Age, ſee 24 *Ed.* 3. 69. adjudged, and 25 *Ed.* 3. 42. Lands held *in Capite* were given to *A.* for Life, Remainder to *B.* his Son in Tail, Remainder to the right Heirs of *A.* who died, *B.* ſhall pay Relief to the King. 26 *Ed.* 3. 71. *Dyer* 308. 40 *Ed.* 3. 9. The Grandfather was Leſſee for Life, Remainder to the Father in Tail, Remainder to the right Heirs of the Grandfather of Lands *in Capite.* The Father dies, and the Grandfather and Son levy a Fine to *J. S.* and take back an Eſtate to the Ayl for Life, Remainder to the Son and his Wife in Tail, Remainder to the right Heirs of the Grandfather; the Grandfather ſurrenders, *&c.* the Son ſhall pay Relief. *Dyer* 235.

(*b*) 40 *Ed.* 3. 14. 2 *H.* 4. 16. 11 *H.* 4. 80. 7 *H.* 4. 35.

(*c*) See *Ratcliff*'s Caſe, 7 *Co.* 83. The Mother ſhall have the Cuſtody of her Son, or Daughter and Heir Apparent, againſt a Deforceor, but not againſt a Guardian in Chivalry, as in the Caſe of a Father. 9 *Ed.* 4. 53.

11 H. 7. 12. contra. 7 H. 4. 12. ac. Br. Gard 98. 43 Ed. 3. 18. contra.

If an Infant recover Land by a Writ of *Dum non fuit compos mentis*, he ſhall not be in Ward; and ſo it ſeemeth if (*a*) he do recover by a Formedon or other Action Aunceſtrel, where he could not enter, becauſe his Anceſtor did not die Tenant to the Lord, *&c.* nor in his Homage. *Stamf. Prærog.* 8. H

And a Man may ſeize his Ward, although he be Apprentice or in Service of another. 4 *Eliz.* 259. 14 *H.* 8. 14, 32. 8 *Ed.* 4. 7. 27 *Aſſ.* 21. I

But if the Tenant maketh a Feoffment by Colluſion, the Lord ought to recover the Land by a Writ of Right of Ward, before he ſhall have a Writ for the Raviſhment of the Ward, *&c.* (*b*). 12 *H.* 4. 13. K

If a Man be Tenant by the Curteſy of a Seigniory, the Heir ſhall not be in Ward during the Life of the Tenant by the Curteſy, *&c. Bro. Gard* 110. L

But if a Man have Iſſue a Son, and afterwards he taketh a Wife who hath Lands holden by Knight's Service, and hath Iſſue by her, and afterwards the Wife dieth, if the Huſband be not Tenant by the Curteſy of the Land, then the Huſband's younger Son ſhall be in Ward during the Life of his Father, *&c.* *N. B.* 99. 30 *Ed.* 1. *Gard* 156.

30 Ed. 1. Gard 156. ac but ſhall not have Forfeiture upon Tender and Refuſal.

If an Infant be married in the Life of his Father within the Age of Conſent, and afterwards the Father dieth, the Infant being within the Age of Conſent; the Lord ſhall have a Writ of Raviſhment of Ward for the Infant, becauſe he may perhaps diſagree unto the Marriage. M

7 H. 6. 12. In Caſe of the King.

(*c*) And the Lord of the Villain ſhall have the Wardſhip of the Land, and the Body of the Heir of a Villain, if he ſeize him before the Lord, *&c.* otherwiſe not of the Land. N

40 Aſſ. 7. Br. Vill. 31.

If Lands deſcend unto the Wife, and afterwards the Wife hath Iſſue by her Huſband, and dieth before the Huſband entreth, ſo that he ſhall not be Tenant by the Curteſy; the Iſſue ſhall (*d*) be in Ward, if he be within Age, and if he be not Heir Apparent to the Huſband; and ſo if the Iſſue by the Wife were a Woman, and within Age, where the Huſband hath a Son living, that Iſſue within Age ſhall be in Ward, during the Life of the Huſband which is its Father. O

31 Ed. 1. Gard 154. 2 Ed. 2. Gard 3.

And *Paſch.* 31 *Ed.* 3. the Opinion was, That if the Huſband have not Land which ſhall from him deſcend to his Iſſue, that then his Iſſue ſhall be in Ward for the Lands of his Wife, if he were within Age, *&c.* in the Life of the Huſband: But it ſeemeth that the Law is not now taken to be ſo.

26 Ed. 3. 65. 33 Ed. 3. Gard 161.

Guardian in Socage did grant the Wardſhip over to a Stranger, and the Grant awarded good. *Hill.* 26 *Ed.* 3. & *Hill.* 31 *Ed.* 3. P

N. B. 92. 11 H. 7. 12. 12 H. 7. 10. 6 H. 4. 4.

If an Infant enter for a Condition broken, upon a Feoffment made by his Anceſtor, he ſhall be in Ward for that Land, if it be holden by Knight's Service. *Dyer* 304. *b.* 32 *Ed.* 3. *Gard* 32. 7 *Eliz.* 304. *b.* *Ant.* 90. H. Q

(*a*) Tenant in Tail, with a Remainder in Fee, aliens in Fee, and dies without Iſſue, the Heir of him in Remainder recovers in a Formedon, he ſhall not be in Ward; by *Dyer*, *Trin.* 3 *Eliz.*

(*b*) Or Right of Ward for the Body. 12 *H.* 4. 13. It ſeems he may ſeize the Body immediately. *Kelw.* 120.

Note; A Tenant for Life of a Seigniory ſhall have Wardſhip, but not Eſcuage. 6 *Ed.* 2. *Gard* 122.

(*c*) 40 *Aſſ. pl.* 17. *Eſcheat* 16. *Gard* 131. *Litt.* 25.

(*d*) Be it Male or Female. 31 *Ed.* 3. *Gard* 154. 8 *Ed.* 2. *Treſpaſs* 235. 33 *H.* 6. 55.

R (*a*) And a Man or a Woman ſhall have a Writ, *Wherefore he raviſhed his* or *her Son and Heir:* Or, *Wherefore he raviſhed his* or *her Daughter and Heir*; or *raviſhed his* or *her Couſin and Heir*, &c. and that by the Common Law.

Vide 2 & 3 Eliz. Dyer 190.

S And the Proceſs in a Writ of Ward appeareth by the Statute of *Marlebridge*, *cap.* 7. *viz.* Summons, Attachment and Diſtreſs (*b*).

And in a Writ of Right of Ward, if he cometh not at the Diſtreſs, then the Proclamation ſhall be awarded, that he ſhall have Day by which two or three County Courts are holden in the mean time, before the Return thereof; and if the Writ be returned ſerved, and he do not appear, he ſhall loſe the Wardſhip, and the Plaintiff ſhall by Judgment recover the ſame (*c*).

Writ of Eſcheat.

THE Writ of Eſcheat lieth where the Tenant who hath an Eſtate in Fee-ſimple of any Lands or Tenements, and holdeth them of another, and the Tenant dieth ſeiſed without Heir General or Special, the Lord ſhall have the Writ of Eſcheat againſt him who is Tenant of the Lands or Tenements, after the Death of his Tenant, and by this Writ he ſhall recover the Land, becauſe he ſhall have the ſame in lieu of his Services.

36 Ed. 3. 17. 3 Ed. 3. Bar. 257. Foundership ſhall not eſcheat nor be forfeited, becauſe it is tied to the Blood. Alſo Rent-charge ſhall not eſcheat by Death, contra by Attainder. 24 Ed. 3. 12. Br. Eſcheat. 9 H. 7. 37. 7 Ed. 4. 11, 120. If Abbey or Pariſh Church be diſſolved, the Lands which they held ſhall eſcheat. 21 H. 7. 89. If a Man holdeth two Acres by ſeveral Services of one Lord, he ought to have two Writs of Eſcheat.

A But if Tenant in Tail die without Heir, he in the Reverſion ſhall not have a Writ of Eſcheat, but a Formedon in the Reverter. [144.]

But if a Man be Tenant in Tail of Land, the Remainder to his right Heirs, and dieth without Heir, then the Lord of whom the Lands were holden in

Tenant in Tail of a Seigniory grants the ſame, which eſcheats, Tenant in Tail dieth without Iſſue, he in the Reverſion ſhall have Eſcheat of the Land, becauſe he is come in lieu of the Seignior. See 40 Ed. 3. 33 Ed. 3. Eſcheat 9. but by this Opinion he ſhall not have Eſcheat, becauſe the Reverſion was out of him at the Death of the Tenant.

(*a*) 21 *H.* 6. 14. 32 *Ed.* 3. *Gard* 32. *Ant.* 90. H.

(*b*) 13 *Ed.* 4. 12. *Bro. Faux Lat.* 81. See *Dyer* 304. And by ſome, if the Sheriff returns *Nihil*, *&c.* yet a *Diſtringas* with Proclamation ſhall iſſue. 11 *H.* 6. 3. *contra* 21 *H.* 6. 56.

(*c*) See 12 *H.* 4. 16. 29 *Aſſ.* 35. See 24 *Ed.* 3. 44. Judgment given and an Inquiry of Damages, *&c.* afterward, and therefore Error brought. 42 *Ed.* 3. 1. an Inquiry of Damages, and whether the Heir were married, *&c.* and Judgment given afterwards. See 24 *Ed.* 3. 49. Judgment for the Ward inſtantly; and *Note* the Cauſe: A Reſummons in a Writ of Ward was ſued by the Heir of the Plaintiff, againſt the Executors of the Defendant, who plead that the Heir was of full Age in the Teſtator's Life-time, and that before this Writ purchaſed they had fully adminiſtred; and the Plaintiff, *per Chaſement* replied, that he had not Aſſets, *&c.* and he had Judgment inſtantly for the Ward, and the Inqueſt was taken on the Iſſue for his Damages; and afterwards the Defendant could not be eſſoined, becauſe the Original was determined. 24 *Ed.* 3. 49, 53.

Tail, ſhall have a Writ of (*a*) Eſcheat, becauſe the Tenant in Tail was Tenant unto the Lord for the Fee-ſimple that he had in the Land, *&c.*

3 H. 2. Entr. 38. 7 H. 4. 17. contr. if the Diſſeiſor die or alien, for theſe are Tenants by Title.

But if a Man be Tenant for Life, the Remainder in Fee unto a Stranger and his Heirs, and afterwards the Stranger dieth without Heir, and afterward the Tenant for Life dieth; the Lord ſhall not have a Writ of Eſcheat, becauſe the Tenant for Life was Tenant to the Lord, and not he in the Remainder, *&c.* But there the Lord ſhall have a Writ of Intruſion, if a Stranger enter on the Land after the Death of Tenant for Life. B

5 Ed. 4. 14. 32 H. 6. 27. 37 H. 6. 1.

(*b*) And if the Tenant be diſſeiſed, and afterwards dieth without Heir, *&c.* it ſeemeth the Lord ſhall have a Writ of Eſcheat, becauſe his Tenant died in the Homage. And in that Caſe he ſhall have a Writ of Right of Ward, if the Tenant die, his Heir being within Age, and by the like Reaſon he ſhall have a Writ of Eſcheat. 2 *H.* 4. 8. *con.* 15 *Ed.* 4. 14. *cont.* C

If the Tenant dieth without Heirs, and afterwards the Lord dieth; the Heir of the Lord ſhall have a Writ of Eſcheat for to recover the Land, *&c.* for that Eſcheat made, and ſhall give a Right unto the Lord to have the Land. D

46 Ed. 3. 4. The Son brought Eſcheat, ſuppoſing that the Tenant held of his Father, whoſe Heir he is, and Exception taken, becauſe it ought to be Quod de eo tenet.

And this Writ ſhall deſcend from the Lord unto his Heir, *&c.* and the Forms of the Writs of Eſcheats are divers: One where the Tenant is a Baſtard, and dieth without Heir, and then the Writ is ſuch: E

The King to the Sheriff, &c. *Command* A. *&c. that he render to* B. *ten Acres of Land with the Appurtenances in* N. *which* C. *held of him, and which ought to revert to him the ſaid* B. *as his Eſcheat, for that the ſaid* C. *was a Baſtard, and died without Heir, as it is ſaid*, &c.

And if he be not a Baſtard, (*c*) but dieth without Heir, then the Writ is, *And which ought to revert to him the ſaid* B. *as his Eſcheat, for that the aforeſaid* C. *died without Heir*; or thus, *for that the aforeſaid* C. *committed Felony, for which he was hanged*; or, *for which he* (*d*) *was outlawed*, or, *for which he abjured the Realm*, &c. *and unleſs*, &c. And the Form of the Writs for the Heir appear in the Regiſter. F

(*a*) See *contra per Scot.* 12 *Ed.* 3. See 15 *Ed.* 4. 13. 3 *H.* 6. *Eſcheat.*

(*b*) See 17 *Ed.* 3. 64. *per Thorp.* So if Tenant makes a Leaſe for Life, by *Hankſ.* 2 *H.* 4. 8. See 7 *H.* 4. 17. 32 *H.* 6. 27. If Tenant makes a Leaſe for Life, and then dies, having Iſſue *B.* who dies without Heir, and afterwards Tenant for Life dies; if a Tenant abates, the Lord may have Intruſion; but by *Hankſ.* he ſhall not have Eſcheat; *contra Fitz.* For the Words of the Writ are true, that he is dead without Heir, and that he holds of him; but agreed by all, that if he brings Eſcheat, he cannot have this Writ, ſuppoſing that the Leſſor dies without Heir, though he was the laſt that was ſeiſed in Demeſne; for it is a good Plea to ſay that he had Iſſue *B.* who ſurvived him; and it is not material whether *B.* was ſeiſed or not. See 11 *H.* 4. 11. 7 *H.* 5. 9.

(*c*) Or committed Felony. 19 *Ed.* 3. *Brief* 251.

(*d*) And the Outlawry for Felony ſhall not be reverſed, without ſuing a *Scire facias* againſt the Lord mediate and immediate, 9 *H.* 4. 3. accordant, and in this Writ, Error in the Outlawry cannot be ſhewn. *Dyer* 67.

G And the King ſhall have a Writ of Eſcheat for Lands in *London*, if the Tenant died ſeiſed of Lands there without Heir, becauſe the Lands in *London* are holden of the King; and this Writ he may ſue in the King's Bench or in the Common Pleas.

H And if a Man be beheaded for Felony, or die after Judgment, before that he be executed by the Officer; yet the (*a*) Writ ſhall ſay, *Pro quo ſuſpenſus fuit*, *&c.* and it is not material whether that he be hanged or not.

Or if after Judgment he be delivered to the Biſhop.

34 Ed. 3. Eſcheat 10. contrary if he ſtand mute. 4 Ed. 4. 18. 22 H. 6. 38. Newton, If a Man go beyond Sea without Licence, and taketh Wife there, and hath Iſſue and dieth, the Land ſhall eſcheat.

And the Courſe in the Regiſter was, That if a Man were attainted of Felony, that the King did ſend a Writ to the Sheriff to inquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the Year *ultra repriſas*, and that he certify the ſame. But the ſame is altered by the Statute of 28 *Eliz.* 3. *cap.* 9. which is, that a Commiſſion be made out unto the Sheriff to take the Inqueſt: And alſo there was another Writ appointed by the Regiſter, directed unto the Sheriff to inquire whether ſuch Houſe or Land which *W.* had, who was attainted of Felony, were ſeiſed into the King's Hand for a Year and one Day, or not, and of whom they were holden, and who had the Year, Day and Waſte, and ought to anſwer the King for the ſame, and that he ſend the ſame before the King, *&c.* and now in Place of theſe Writs, there ought to be a Commiſſion granted to inquire thereof, directed to certain Perſons by the Statute aforeſaid.

48 Ed. 3. 34. Where the Tenant is Utlage of Felony; the Lord hath Election to have a Writ of Eſcheat; ſuppoſing that the Tenant was Utlage, or that he died without Heir.

K And if a Man be attainted of Felony, and another enters into the Land, and taketh the Profits, and if it be found by Commiſſion that ſuch a Man, who was attainted of Felony, had ſuch Lands and Tenements, and that the Lands and Tenements have been in the King's Hands for one Year and a Day; and that *B.* hath taken the Profits for that Year and Day, and alſo hath had the Waſte thereof; and that the Lands are holden of *F.* Then *F.* ſhall have a Writ unto the Sheriff for to deliver him Seiſure of the Lands, *&c.* *Salvo jure cujuſlibet.*

And he who hath taken the Profits for the ſaid Year and Day, ſhall anſwer the King for the ſame: And thereby it appeareth, that the King ſhall not have but the next Year and Day, which cometh after the Attainder, and that he who took the Profits for that Year, ſhall anſwer the King for the ſame.

49 Ed. 3. 12.

L And if Lands be holden of an Abbot, and the Tenant die without Heir, *&c.* the Succeſſor ſhall have a Writ of Eſcheat, and the Writ ſhall ſuppoſe, *Ought to revert to him the now Abbot as his Eſcheat*, *for that the aforeſaid*, &c. *died without Heir*, &c. *as it is ſaid*; *and unleſs*, &c.

(*a*) See *Rot. Parl.* 8 *Ed.* 2. *M.* 5. *ubi Decollatur per R. & Concil'.* If the Appellee be killed in Battle, the Judgment is to be given againſt him; otherwiſe the Lord cannot have the Eſcheat. 8 *Ed.* 1. *Judgment* 225.

M (*a*) And the Tenant for Life of the Seigniory ſhall have a Writ of Eſcheat, or Tenant in Dowry, or by the Curteſy, and alſo the Lord ſhall have a Writ of Eſcheat of the Meſnalty, which is but a Rent Service, and ſhall demand the Rent by the Writ.

7 H. 6. Eſcheat 18. 21 H. 7. 30. But by the Count he ſhall ſuppoſe the Land was holden. 11 H. 4. 82.

N And the King ſhall have a Writ of Eſcheat of Tenements within Cities and Boroughs, which are holden of him in Fee-farm. 3 *H.* 6. 32. 49 *Ed.* 3. 5. *a.*

O (*b*) And if a Man have Title to have a Writ of Eſcheat, if he do not accept Homage of the Tenant, he ſhall not afterwards have the Writ againſt him, becauſe he hath accepted him his Tenant; and ſo if he accept Fealty of him. But if he do accept the Rent of the Tenant, that ſhall not bar him of his Writ of Eſcheat, and the Proceſs are Summons, Grand Cape and Petit Cape, as in any other *Præcipe quod reddat.* But it is otherwiſe if he accept (*c*) Rent from the Heir of the Diſſeiſor. *Co. Lit.*

Writ of Covenant.

[145.] A WRITS of Covenant are of divers Natures; for ſome are merely perſonal, and ſome Covenants are real; to have a real Thing, as Lands and Tenements; as a Covenant to levy a Fine of Land is a real Covenant: But a Writ of Covenant which is more perſonal is, where a Man by Deed doth covenant with another to build him a Houſe, *&c.* or to ſerve him, or to infeoff him, *&c.* and he doth not the ſame according to the Covenant; then he with whom the Covenant was ſo made ſhall have Writ of Covenant againſt him. And there is a Note in the Regiſter, which is this; *A Writ of Covenant ought not to be made according to Law Merch. without a Deed, becauſe no Plea of Covenant can be without Deed, and every Man ought to be judged according to his Deed, and not by another Law*; and the Form of the Writ is ſuch: *The King to the Sheriff*, &c. *Command* A. *that*, &c. *he keep his Covenant*

(*a*) And if the Tenant for Life dies before Entry, he in Reverſion ſhall have a Writ of Eſcheat. *Kelw.* 114. See 7 *R.* 2. *Eſcheat* 4. 33 *Ed.* 3. *Dower* 137. *contr.* 8 *Ed.* 2. *Eſcheat* 12.

(*b*) 13 *Ed.* 1. *Avowry* 235. The elder Son receives Homage of the Middlemoſt, ſeiſed in Fee, who dies without Iſſue, the younger Brother ſhall have the Land, and the Iſſue of the elder Brother, if not born at the Time, ſhall have it, *&c.* See 11 *Ed.* 3. *Dower* 63. where Acceptance of the Homage by the Wife, after the Death of her Huſband, ſhall ouſt her of Dower of the Tenements. See 5 *H.* 7. *Droit* 66. Acceptance of Homage from the Tenant, ſhall bar in a Writ of Right. See 17 *Aſſ.* 3 the Diſſeiſee accepts Homage from the Diſſeiſor, it ſhall bar him for his Life, but not his Heir. 26 *Ed.* 3. 72. Tenant dies without Heir, the Lord enters and makes a Feoffment, and takes back an Eſtate for Life; a Baſtard of the Tenant enters and infeoffs *G.* of whom the Lord accepts the Homage; and it is demurred in Law, whether this has not excuſed (eſtopped) him to have the Land; the Doubt is, becauſe the Seigniory was abſolutely gone by the Entry and Acceptance of the Fealty, in Bar of the Writ of Entry *ſur Diſſeiſin.* 13 *Ed.* 3 *Bar.* 353. *Vide ant.* E.

(*c*) And *Note*; Acceptance of the Rent ſhall not make a Change in the Avowry, becauſe it may be received as by the Hands of his Bailiff, *&c.* but it is otherwiſe of Homage or Fealty. See 4 *H.* 6. 21. *Co. Lit.*

with B. *&c. touching the Damage and Loſs by the Breach of Truſt and Default of* W. *the Son of* R. *Apprentice of the aforeſaid* B. *committed within the Term of*
B *ſix Years, to be reſtored to him the ſaid* B. *and unleſs*, &c.

C And if a Man make a Covenant by Deed to another and his Heirs, to infeoff him and his Heirs of the Manor of *D.* &c. Now if he will not do it, and he to whom the Covenant is made dieth, his Heir ſhall have a Writ of Covenant upon that Deed; and alſo his Aſſigns ſhall have a Writ of Covenant where the Covenant is made to him and his Aſſigns. 18 Eliz. Dy. 217. Sir Anthony Cook's Caſe.

D And ſo Executors ſhall have a Writ of Covenant, of a Covenant made unto their Teſtators for a perſonal Thing, and theſe Writs appear in the Regiſter.

And it appeareth by the Regiſter he may ſue a Plaint of Covenant in the County or in the Hundred Court, *&c.*

And that he ſhall have a *Recordare* to the Sheriff for to remove the ſame out of the County into the Common Pleas, as it ſhall be done in a Replevin ſued there.

And if the Plaint of Covenant be ſued in the Hundred, or in other Court of other Lord, he ſhall have an *Accedas ad Curiam* directed unto the Sheriff to remove the Plaint into the Common Pleas (*a*).

F And the Writ of Covenant for Executors is ſuch: *Command* I. *that*, &c. *with* A. B. *and* C. *Executors of the Teſtament of* N. *the Covenant made between him the ſaid* N. *and* W. *of* E. *for him the ſaid* W. *to continue with the aforeſaid* N. *as an Apprentice for ſeven Years, and after that Term compleated to ſerve him the ſaid* N. *for ſo long Time as he the ſaid* W. *ſhould eloign himſelf from the Service of the ſame* N. *within the ſaid Term, which ſaid Covenant to fulfil and keep he the ſaid* W. *by his Writing bound himſelf*, &c. *and unleſs*, &c. *And the ſaid Executors ſhall make you ſecure*, &c.

G And if a Man make ſuch Covenant by Word; or to build him a Houſe, *&c.* and he doth it ill; then the Party ſhall have an Action upon the Caſe for the ill doing of it (*b*).

If a Man covenant by Word to do ſuch a Thing for a certain Sum of Money, and receive one Parcel of the Money, and Day is appointed for the Payment of the reſt: Now if he do not according to his Covenant, he ſhall have an Action on the Caſe againſt him for not doing of it, becauſe it is a Bargain betwixt them (*c*).

H And a Writ of Covenant lieth againſt Executors for a Covenant broken of the Teſtator, and the Writ ſhall be, *Command* I. *and* R. *Executors of the Teſtament of* E. *that*, &c. *they perform to* W. *and* A. *his Wife, the Covenant made* V. 48 Ed. 3. 2. 10 H. 7. 18. 32 H. 6. 31.

(*a*) A Man covenants, that neither he nor his Heir ſhall erect any Mill in ſuch a Place, and afterwards he erects a Mill, and an Action of Covenant is thereupon brought by the Heir, and well, 4 *H.* 3. 57. and ſo it is if the Leſſor ouſts the Leſſee and dies, or Tenant in Tail leaſes for Years and dies, and the Iſſue ouſts the Termor, he ſhall have Covenant againſt the Executors. 47 *Ed.* 3. 22. 48 *Ed.* 3. 2. but 38 *Ed.* 3. 24. is, that he ſhall recover the Whole in Damages againſt the Heir, if he has Aſſets by Deſcent, *per Knivet* and *Skipw.*

W. W. See 21 *H.* 6. 55. 2 *H.* 4. 3. 14 *H.* 6. 18. 20 *H.* 6. 34.

(*b*) 21 *H.* 7. 4. 3 *H.* 6. 36. 20 *H* 6. 34. 14 *H* 6. 18 21 *H.* 6. 55. *contra.* 42 *H.* 4. 3. *contra.* 11 *H.* 4. 33. *contra.*

(*c*) 32 *H.* 6. 32.

between her the ſaid A. *and the aforeſaid* E. *for that he the ſaid* E. *his Heirs or Executors, ſhould render to* C. *the Son and Heir of* I. *when the ſame* C. *ſhould come to full Age, his reaſonable Account of the Iſſues of all the Lands and Tenements which the aforeſaid* I. *held in the Town of* N. *in the County of* N. *the Wardſhip of which he the ſaid* E. *had of the Demiſe which the aforeſaid* A. *(to whom the Wardſhip of the Lands and Heir aforeſaid belonged, for that the aforeſaid* I. *held his Land in Socage, and the ſame* A. *was nearer to the Heir of him the ſaid* I.*) made thereof to him the ſaid* E. *&c. and unleſs*, &c.

12 Ed. 3. Covenant 2. 40 Ed. 3. 5.

I (*a*) And if a Man have Lands for a Term of Years, and covenanteth to leave them in as good a Plight as he found them, although that he pulleth down the Houſes, the Leſſor ſhall not have an Action of Covenant before the End of the Term: For the Covenant hath Relation thereunto, *&c.* But if he do Waſte in Wood, Covenant lieth; for he cannot repair it. *Ed.* 1. *Covenant* 29.

26 H. 8. 3. acc.

K If a Man make a Leaſe by Deed Poll, if the Leſſor put out the Leſſee, he ſhall have a Writ of Covenant upon the Deed Poll (*b*). But if a Stranger, who hath no Right, put out the Leſſee, he ſhall not have a Writ of Covenant againſt the Leſſor, becauſe he hath no Remedy by Action againſt the Stranger. But if the Stranger enter by eigne Title upon the Leſſee, then he ſhall have an Action of Covenant againſt the Leſſor, becauſe he hath no other Remedy.

38 Ed. 3. 24. Skipwith and Knevit, he ſhall recover Damages only, 24 Ed. 3. 24. he ſhall recover his Term.

L (*c*) And in a Writ of Covenant brought by the Leſſee againſt the Leſſor, if the Term be not expired, he ſhall recover the Term again, if he hath put him out. But if a Stranger put him out by eigne Title, then he ſhall recover all in Damages againſt the Leſſor. And the ſecond Leſſee ſhall have a Writ of Covenant againſt the Leſſor, if the Leaſe be made to him and his Aſſignees with Warranty.

20 Ed. 3. Covenant 3. Vide 9 Eliz. Dyer 257.

And if a Man leaſe Lands for Life by Deed, and afterwards (*d*) putteth him out, the Leſſee ſhall not have a Writ of Covenant againſt him, but an Aſſiſe. But if he grant by the Deed, that if a Stranger enter by eigne Title, that then

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(*a*) *Perk. Covenant* 29. As to cutting Wood *contra*. See 5 *Co.* 21. *a.*

(*b*) 17 *Ed.* 3. *Covenant* 2. accordant. But if he abate Trees, *&c. contra*. *Temp. Ed.* 1. *Covenant* 29

(*c*) See 20 *Ed.* 3. *Judgment* 177. accordant; for that the Demiſe is good from his Entry; but if Tenant in Tail makes a Leaſe for Years by Deed, and dies ſeiſed of Aſſets in Fee-ſimple; yet the Iſſue in Tail may enter; and therefore the Leſſee ſhall have a Writ of Covenant againſt him to recover Damages, but not to recover the Term, for his Entry was lawful. 38 *Ed.* 3. 24. *Note*; The Writ of Covenant for the Leſſee who is ouſted by a Stranger, by Title is, *Quod teneat Convent'*, *&c. De damnis & de perditis*. See there the Caſe of a Leſſee for Life, the Remainder in Fee; the Feoffee for Life makes a Leaſe for Years (by *dedi & demiſi*) rendring Rent by Indenture, and dies within the Term; he in Remainder enters; the Leſſee brings Covenant againſt the Executors, and held that it did not lie. 1. Becauſe it is not ſhewn, that he was poſſeſſed at the Time of the Entry of him in Remainder. 2. For that without an expreſs Covenant, the Executor ſhall not be charged in this Caſe, for the Covenant in Law expired with the Term. But if *A.* ſeiſed in Fee, makes a Leaſe for Years and dies, and the Heir ouſts the Leſſee, he ſhall have Covenant againſt the Heir, for this Covenant in Law. See the Statute *de Bigamis*, and *Dyer* 257. 11 *H.* 6. 3. *Covenant* 23, 27. 6 *Ed.* 2. 17. 38 *Ed.* 3. 34. 16 *H.* 7. 10. *N. B.* 102. *Covenant* 28, 30, *&c.*

(*d*) 32 *H.* 6. 32. *contr.* if Leſſee for Years; and *Note*; Action of Covenant lies againſt the Aſſignee of a Leſſee for Years for Reparations, *&c.* for that it goes with the Land; alſo it lies againſt the firſt Leſſee after Aſſignment. 25 *H.* 8. *Covenant* 32.

he ſhall have a Writ of Covenant thereupon: Now upon the ſpecial Matter he ſhall have a Writ of Covenant, otherwiſe not; *quod vide Trin.* 26 *H.* 6. *Covenant*, *pl.* 10.

A And in *London* a Man ſhall have a Writ of Covenant without a Deed for the Covenant broken. 27 *H.* 6. 10.

[146.]

27 H. 6. Covenant 11.

B And a Man ſhall have a Writ of Covenant againſt the Sureties who became Sureties, or gave Security that a Man ſhould perform ſuch Covenant, &c. 39 *Ed.* 3. 9.

17 H. 6. 10. 40 Ed. 3. 5. 42 Ed. 3. 3.

C (*a*) And the Aſſignee of the Leſſee ſhall maintain a Writ of Covenant againſt the Leſſor, although there be not any Aſſignee mentioned in the Deed of Covenant.

Finchden. If the Covenant go with Land, the Aſſignee ſhall have Covenant without being named. As two Coparceners, one covenanteth to diſcharge the other Party, the Alienee ſhall have Covenant.

D Alſo Adminiſtrators ſhall have a Writ of Covenant as well as Executors.

E And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party ſhall not plead the ſame to abate the Writ, unleſs the Deed bear Date in another County, and ſo the Titles of Covenant in the Abridgments were at large for that Matter.

26 H. 6. Covenant 9, although it bear Date in other County, yet the Writ lieth where the Land is.

(*b*) *Covenant to levy a Fine.*

F THERE is another Manner of Covenant, which is more in the Realty. And that Writ properly lieth where a Man by Deed granteth to another to levy a Fine to him and his Heirs of certain Lands and Tenements, he to whom the Grant is made ſhall have a Writ of Covenant againſt him to levy a Fine of that Land; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *&c. that*, &c. *he keep with* B. *his Covenant made between them* (*c*) *of the Manor of* N. *with the Appurtenances*; or thus, *of one Meſſuage and one Acre of Land with the Appurtenances in* N. *&c. and unleſs*, &c.

F. Brief 867.

And the Form of the Particulars in that Writ ſhall be uſed as the Form is in a *Præcipe quod reddat* of Land, to put the Particulars in the ſaid Writ.

46 Ed. 3. 4. 47 Ed. 3. 3.

(*a*) *Doctor and Student* 16, 17. *Bro. Covenant* 32. *F. Obligation* 16. *Perk.* 13. 40 *Ed.* 2. 5. *ſupra* M.

(*b*) And yet by *Paſton*, it is only a perſonal Action; and a Releaſe of all Actions perſonal, is a good Plea therein; alſo the Sheriff may return *Nibil* on the Defendant in this Writ, and need not ſummon him *in Terra petita*; *ſed alii contr.* 10 *H.* 6. 12, 13.

Note the Difference between this and other Writs of Covenant; for this Writ is ſpecial, and the others general. 10 *H.* 6. 13.

(*c*) And *Note*; On ſuch Fine levied of the Manor of *N.* brought in the County of *L.* the Services of the Tenants in another County, held of the ſame Manor, ſhall paſs; and a *Per quæ ſervitia* ſhall be brought in the County of *L.* Adjudged 21 *Ed.* 3. 18.

35 H 8. B 20. Fines 116. (*a*) And if he who ought to levy the Fine, and make the Conuſance, cannot come for Sickneſs or other reaſonable Cauſe into Court, then he may ſue a Writ of *Dedimus poteſtatem* directed unto ſome Juſtice, that he go to him to take the Conuſance, and to certify the ſame unto Juſtices of the Common Pleas, and the Writ of Covenant ought to be ſued before the *Dedimus poteſtatem* be returned in the Common Pleas; and the *Dedimus poteſtatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Juſtices; and the Writ ſhall be ſuch (*b*): G

The King to his beloved and faithful W. Rickhill, *greeting: Whereas our Writ of Covenant is depending before you and your Companions our Juſtices of the Bench between* A. *and* B. *and* C. *his Wife, of one Plough-land with the Appurtenances in* N. *for a Fine to be levied thereof between them before you and your ſaid Companions of the Bench aforeſaid, according to the Law and Cuſtom of our Realm; and the aforeſaid* A. B. *and* C. *are themſelves ſo impotent, that without the greateſt Danger of their Bodies they are not able to travel to* Weſtminſter *to make the Acknowledgments which are required in this Behalf, at the Day contained in the Writ aforeſaid, as we have received Information: We having Compaſſion of the Eſtate of them the ſaid* A. B. *&* C. *in this Behalf, have given to you Power of receiving the Acknowledgments which the aforeſaid* A. B. *and* C. *will make before you in the Premiſſes, and therefore we command you, that going perſonally to the aforeſaid* A. B. *and* C. *you do receive their Acknowledgments aforeſaid, and when you ſhall have received them, that you do certify your Companions thereof diſtinctly and openly, that then the Fine between the Parties aforeſaid, of the Tenements aforeſaid, before you and your ſaid Companions in the ſame Bench may be levied, according to the Law and Cuſtom aforeſaid; and have there then this Writ. Witneſs*, &c.

And if the *Dedimus poteſtatem* be made unto any the Juſtices of the King's Bench, then the Form of the Writ is ſuch:

The King to his beloved, &c. W. *his Chief Juſtice*, &c. Or thus: *To our Juſtice*, &c. *Whereas the Warden of the Houſe of the Vicarage of the Church of the bleſſed* Peter *of* York, *hath brought our Writ of Covenant againſt* H. *Knight, of the Advowſon of the Church of* F. *for a Fine to be levied thereof between them, before our Juſtices of the Bench, according to the Law and Cuſtom of our Realm, and the ſaid Warden and* H. *are ſo impotent* (as above, until) *and when you ſhall have received them, that you do certify our aforeſaid Juſtices thereof under your Seal diſtinctly and openly, that then the Fine*, (&c. as above, until) *according to the Law and Cuſtom abovesaid, ſending to the ſame Juſtices this Writ. Witneſs*, &c.

And if a Man have divers Writs of Covenant depending againſt ſeveral Perſons in ſeveral Counties, *&c.* he may have one Writ of *Dedimus poteſtatem* directed to one Juſtice to take their Conuſance ſeverally, and to certify them, *&c.* and the Form of the Writ is ſuch:

(*a*) See the Statute of *Carliſle*, 15 *Ed.* 2. for, before that Statute, one might have levied a Fine by Attorney. *Libr. Parl.* 18 *Ed.* 1. 11. See Stat. *Mag. Chart. fol.* 93.

(*b*) See a good Diſtinction between antient Fines and thoſe levied at this Day. A Fine levied without an Original, or of Things not compriſed in the Original, or after a Nonſuit recorded, good in antient Fines. 16 *Ed.* 3. *Abbe* 13.

The King, &c. *Whereas our Writ of Covenant is depending before you and your Companions our Juſtices of the Bench between* E. *and* I. *of the Moiety of the Manor of* N. *with the Appurtenances, and another our Writ of Covenant is depending before you and your Companions aforeſaid between him the ſaid* E. *and the aforeſaid* I. *of one Meſſuage*, &c. (and ſo of others, *&c.*) *for Fines to be levied between them*, &c. (as above).

And if a Man ought for to levy a Fine, and he is going in the King's Service, then he ſhall have a *Dedimus poteſtatem* directed unto the Juſtices to take his Conuſance. And ſo of a Woman who is with Child; and the Writ ſhall mention the ſame, thus:

The King, &c. *Whereas our Writ*, &c. (as above, until) *for a Fine to be levied*, &c. *and the aforeſaid* W. *by our Command is going elſewhere in our Service, and the aforeſaid* I. *is pregnant and great with Child, and the aforeſaid* B. *is weak and impotent, by which the aforeſaid* W. *cannot come, and the aforeſaid* I. *and* B. *are not able to travel to* Weſtminſter *to make the Acknowledgments*, &c. *at the Day contained in the ſaid Writ*; *We being willing to do a ſpecial Favour to him the ſaid* W. *in this Behalf, and having Compaſſion of the Eſtate of them the ſaid* I. *and* B. *in this Behalf*, &c. [147.]

A And if he in the Reverſion will levy a Fine of his Reverſion unto another, upon a Writ of Covenant ſued forth againſt him, the Conuſance ſhall be taken in the Common Pleas, but the Fine ſhall not be ingroſſed until the Tenant for Life have attorned; and the Fine is ſaid to be ingroſſed, when the Chirographer maketh Indentures of the Fine, and delivereth them to the Party to whom the Conuſance is made, and then it is ſaid, that the Fine is ingroſſed, and after that the Conuſee ſhall not have a *Quid juris clamat* againſt the Tenant for Life. But the Courſe is, when he in the Reverſion upon the Writ of Covenant ſued againſt him, maketh the Conuſance of the Reverſion by Fine, *&c.* then upon that the Conuſee ſhall have a *Quid juris clamat* againſt the Tenant for Life; and if the Tenant for Life be ſo weak that he cannot travel, then he may ſue a *Dedimus poteſtatem* directed to the Juſtices to take his Conuſance, *&c.* and to certify the ſame into the Common Pleas, *&c.*

22 H. 6. 13.
1 Ed. 3.
No Quid juris clamat lies after Judgment. Plow. 431.

And the like Writ of *Dedimus poteſtatem* ſhall be granted, where the Lord by Fine granteth the Services of his Tenant unto another upon a Writ of Covenant ſued againſt him. If the Conuſee ſue a *Per quæ ſervitia* againſt the Tenant, then if he be weak or ſick, he may ſue a *Dedimus poteſtatem* to take his Conuſance, *&c.* and to certify the ſame, *&c.* But now the Courſe is for to admit the Defendant in a *Quid juris clamat*, or *Per quæ ſervitia*, to make Attorney after a Plea pleaded; and that eſpecially where he pleadeth ſuch Plea, that he ſhall forfeit his Eſtate, if it be found againſt him, *&c.* then it is clear, that he ſhall make Attorney after the Plea pleaded; and the Courſe is now to make Attorney after Pleading; and if he be adjudged to attorn, to award a *Diſtringas ad attornandum* againſt him, *&c.*

2 H. 5. 1.
4 Mar. Dyer 166.

B And if a Man have a Writ of Covenant againſt one to levy a Fine, and thereupon a *Dedimus poteſtatem* directed to a Judge to take the Conuſance of the Party, and the Judge doth take the Conuſance by Force of the Writ, and will not certify the ſame in the Common Pleas, then the Party may ſue a *Certiorari* directed to the ſame Judge, reciting all the Matter how he hath taken the Conuſance, commanding him by the Writ to certify the ſame into the

Common Pleas: And upon that an *Alias* and *Pluries*, and Attachment to the Judge, if he will not certify it, or return it, or ſhew Cauſe why he do not certify it. And if the Judge be dead who took the Conuſance, he may have a *Certiorari* to his Executors, and an *Alias* and *Pluries*, and Attachment, *vel cauſam nobis ſignifices*; and in the End of the Writ ſhall be this Clauſe; *And have there the Writ by which you received the Acknowledgments aforeſaid, and this Writ, for we have given in Charge to our Juſtices of the Bench aforeſaid, that you have ſent to them the Acknowledgments and Writs aforeſaid under our Seal, that they may receive them from you. Witneſs*, &c. And by that it appeareth, that although the *Certiorari* be ſent to the Judge to return the Conuſance taken before the Juſtices of the Commōn Pleas, that yet he ought to ſue forth another Writ to be ſent and directed to two Juſtices of the Common Pleas, to receive ſuch Conuſance taken: And the Writ of *Certiorari*, which ſhall be directed unto the Juſtices of the Common Pleas to receive the Conuſance, is in the Regiſter amongſt the Writs of Covenants.

And if a Man will levy a Fine of Lands holden of the King in Chief, then C he ought to have a ſpecial Writ unto the Juſtices of the Common Pleas, thus: *The King to his Juſtices of the Bench, greeting: Whereas by our Letters Patent of our ſpecial Favour we have granted to* I. *that he may infeoff* W. *of his Manors of* N. *and* I. *with the Appurtenances, which he holds of us in Chief*, &c. (reciting the whole Charter) *as in our Letters aforeſaid is more fully contained, and our Writ of Covenant is depending before you in our Bench aforeſaid between the aforeſaid* I. *and* W. *of the Manors aforeſaid, for a Fine to be levied thereof between them, according to the Law and Cuſtom of our Realm, as we have received Information; We command you, that you permit that Fine between the Parties aforeſaid to be levied before you in the Bench aforeſaid, according to the Tenor of our Letters Patent aforeſaid*, &c.

And if it do appear unto the Court, that the Lands are holden of the King D *in Capite*, the Court *ex Officio* ought not to ſuffer ſuch Fine to be levied without ſuch a Writ directed unto them, declaring the King's Pleaſure.

And there is another Writ of *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer, to certify the Tranſcript of a Fine in the Chancery; and a Writ of *Mittimus* out of the Chancery directed to the Juſtices of the Common Pleas, to tranſcribe the ſaid Fine, *&c.*

And another Form of Writ of *Certiorari* directed unto the Chirographer, to certify into the Chancery *Tenorem cujuſdam notæ in Cur' Domini* E. *nuper Regis Angliæ*, *&c.* as appeareth in the Regiſter.

Writ of Dower unde Nihil habet.

29 Aſſ. 68. Br. Dower 63. Dower lieth not againſt Guardian in Socage, and therefore it is doubted if ſuch a Guardian ſhall aſſign Dower, if there be a Diſſeiſin.

A Writ of Dower *unde Nihil habet* lieth, in Caſe, where a Woman taketh E her Huſband, who is ſole ſeiſed of Lands or Tenements to him and his Heirs in Fee-ſimple, or unto him and the Heirs of his Body, *&c.* Or if the Huſband during the Marriage betwixt him and his Wife, be ſolely ſeiſed in Fee-ſimple or in Fee-tail of ſuch Eſtate, that the Iſſue begotten betwixt him and his Wife may inherit the ſame, then if the Huſband doth alien the ſame, or dieth ſeiſed thereof, or be thereof diſſeiſed, and dieth, his Wife ſhall have a Writ of Dower *unde Nihil habet* against him who is Tenant of the [148.] Freehold of the Land, or againſt him who is Guardian in Knight's Service of the Land; and the Form of the Writ is,

A *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* B. *who was the Wife of* C. *her reaſonable Dower which falls to her Share*, *of the Tenement which was the aforeſaid* C.'s, *ſome time her Huſband in* N. *whereof ſhe nothing hath*, *as ſhe ſaith*, *and whereof ſhe complains that the aforeſaid* A. *unjuſtly deforceth her*, *and unleſs*, &c. (*a*).

And againſt the Guardian the Writ is ſuch: *Command* A. *Guardian of the Land and Heir of* J. *that he render &c. to* B. *who was the Wife of* C. *&c.* (*b*).

Otherwiſe where the Wife is endowed *ad oſtium Eccleſiæ*, thus: *Command* A. *that*, &c. *he render to* B. *who was the Wife of* C. *one hundred Acres of Land with the Appurtenances in* N. *of which the aforeſaid* C. *ſome time the Huſband of her the ſaid* B. *endowed her at the Door of the Church when he eſpouſed her*, *whereof ſhe nothing hath*, &c.

And if ſhe be endowed *de aſſenſu Patris*, then thus: *Command* A. *that*, &c. *he render to* B. *who was the Wife of* C. *one hundred Acres of Land*, &c. *of which the aforeſaid* C. (*Son and Heir of the aforeſaid* A.) *ſome time the Huſband of her the ſaid* B. *with the Aſſent and Will of him the ſaid* A. *his Father*, *endowed her at the Door of the Church*, &c. *whereof*, &c.

B And the Writ of Dower *unde Nihil habet* may be ſued in the County before the Sheriff by a *Juſticies.*

Perkins 67, 68. Common ſans numbr. & Eſtovers. Old N. B. 5. 2 Ed. 3. Dower 23.

C (*c*) And a Wife ſhall be endowed of Advowſons, Villains, Commons of Paſture, and of other Profits or Liberties of which her Huſband had any Eſtate of Inheritance; which Eſtate the Iſſue betwixt them by Poſſibility may inherit, *&c.*

D And the Wife may ſue a Writ of Dower of Lands or Tenements in *London*, and the Writ ſhall be directed unto the Mayor and Sheriffs of *London*; and the Writ ſhall be ſuch:

The King to the Mayor and Sheriffs of London, *greeting*: *We command you*, *that you juſtice* A. *that juſtly and without Delay*, *and according to the Cuſtom of our City of* London, *he render to* B. *who was the Wife of* C. *her reaſonable Dower which falls to her Share*, &c. *in* London, *and juſtice* D. *that juſtly*, &c. *and according to the Cuſtom*, &c. *he render to the ſaid* B. *her reaſonable Dower*, &c. *in the ſame City*, *whereof ſhe nothing hath*, &c. *as ſhe ſaith*, *and whereof ſhe complains that the aforeſaid* A. *and* D. *do deforce her*, *as ſhe can reaſonably ſhew*, *that they ought to render to her*, *that we may hear no more Clamour*, &c. *Witneſs*, &c.

(*a*) *Note*; Although the Writ is conditional, *Niſi*, *&c.* yet the Demandant is not bound to accept Tender *in pais*, for then he would loſe his Damages, *&c.* nor is the Tenant bound to render himſelf there, and yet he may plead *ſemper paratus*. 11 *H.* 4. 62.

(*b*) 9 *H.* 5. 4. *Note* 13 *Ed.* 3. *Brief* 242. and if he be Guardian both of the Land and Body, he ought to be ſo named in the Writ, or elſe it ſhall abate. 18 *Ed.* 2. *Brief* 822. Alſo he ought to make him Heir by the Writ, to him that was laſt ſeiſed. 11 *Brief* 473.

(*c*) *N. B.* 5. *Perk.* 68. *Poſt.* 149. K. 12 *Ed.* 3. *Dower* 90.

And by that it appeareth, that a Woman ſhall have a Writ of Dower in *London* againſt ſeveral Tenants, by a ſeveral *Juſticies*, in one Writ, as well as ſhe ſhall have a Writ of Dower againſt ſeveral Tenants by ſeveral (*a*) *Præcipes*, and all in one Writ. And the Proceſs is Summons, Grand Cape and Petit Cape in the Common Pleas.

(*b*) *Writ of Admeaſurement of Dower.*

Poſt. 149. B. THE Writ of *Ameaſurement of Dower* lieth, where the Heir, when he is within Age, endoweth the Wife of more than ſhe ought to have Dower of: Or if the Guardian endow the Wife of more than of the third Part of the Land of which ſhe ought to have Dower: Then the (*c*) Heir at his full Age may ſue this Writ againſt the Wife, and thereby ſhe ſhall be admeaſured; and the Surpluſage which ſhe had in Dower ſhall be reſtored to the Heir; but in ſuch Caſe there ſhall not be aſſigned anew any Land to hold in Dower, but to take from her ſo much of the Land which amounteth to above the third Part of all the Land of which ſhe ought to be endowed. F

And if the Heir within Age, before the Guardian enter into the Land, do aſſign to the Wife more Land in Dower than ſhe ought to have, then the Guardian ſhall have the Writ of *Admeaſurement* againſt the Wife, by the Statute of *Weſt*. 2. *cap*. 7. And if the Guardian bring the Writ, and do purſue it againſt the Wife; yet the Heir at his full Age, by the ſame Statute, ſhall have the Writ of *Admeaſurement of Dower* againſt the Wife.

And the Writ is *Vicontiel*, and ſhall be ſued in the County before the Sheriff; and the Writ is ſuch:

(*d*) *The King to the Sheriff*, &c. A. *the Son and Heir of* B. *hath complained unto us*, *that* C. *who was the Wife of the aforeſaid* B. *hath for Dower more of* G

(*a*) *A.* brings Dower againſt *B. de Libero Tenemento* in *C.* and afterwards before Plaint made, brings another Writ in the ſame Vill, againſt the ſame Tenant, this Writ ſhall abate, although that no Plaint was made before; for by *Shard*, one ſhall not have two Writs of Dower *unde nihil habet*, at the ſame Time, in the ſame Vill, except it be on ſome ſpecial Matter, as if the Tenant purchaſe other Tenements after the former Writ, whereof ſhe is dowable. 11 *Ed*. 3. *Brief* 476. *contra* 39 *H*. 6. 12.

(*b*) *Note*; View is not grantable in this Writ; adjudged 17 *Ed*. 3. 67. *contra*. Adjudged 18 *Ed*. 3. 20.

(*c*) And it ſeems, that the Heir within Age ſhall not have Admeaſurement of Dower. (See 149. *B*. *contr*.) of his own Aſſignment. 7 *Ed*. 2. *Admeaſurement* 13. And *Note*; If the Heir of Age aſſign, he ſhall not have this Writ againſt his own Aſſignment. 6 *H*. 3. *Admeaſurement* 18. And *Note*; It need not be acknowledged of whom the Aſſignment is held. 17 *Ed*. 3. 66.

(*d*) See 13 *Ed*. 3. *Admeaſurement* 17. and yet by *Bract*. *Li*. 4. *c*. 17. If ſhe has Lands in Dower, in divers Counties, there it ought to be *coram Juſticiar'*. And *Note*; there the Tenant ſhall have ſeveral Writs, *viz*. 1. In every Writ of Admeaſurement, all the Lands which ſhe has in the ſame County ſhall be named, and admeaſured. 2. If ſhe has Lands in ſeveral Counties, there ſhall be ſeveral Writs, and ſeveral Extents of all the Lands of which the Party died ſeiſed, as it ſeems; yet he ſhall have one Count, and one Admeaſurement; *ſed Quære*, how it ſhall be made. 13 *Ed*. 4. *Admeaſurement* 17. Yet *Note* 7 *R*. 2. *ibid*. 4. the Defendant was to anſwer, notwithſtanding the Exception. 7 *R*. 2. *Admeaſurement* 4.

the Freehold which was the aforeſaid B.'s *ſome time her Huſband, in* N. *than ſhe ought to have, and than belongs to her to have; And therefore we command you, that juſtly and without Delay you cauſe that Dower to be admeaſured, ſo that the aforeſaid* C. *may not have more for Dower of the Inheritance of aforeſaid* A. *than ſhe ought to have, and than belongs to her to have, according to her reaſonable Dower, and let the aforeſaid* A. *have of that Dower that which he ought to have and belongs to him to have, that we may hear no more Clamour*, &c. *Witneſs*, &c.

And for the Guardian the Writ is ſuch: A. *the Guardian of the Land and Heir of* E. *hath complained unto us, that* C. *who was the Wife of the aforeſaid* E. *hath more for her Dower*, &c. (as above, until) *ſo that the aforeſaid* C. *may not have more in Dower of the Inheritance of the aforeſaid Heir, than ſhe ought to have*, &c. *and that the aforeſaid Guardian may have of that Dower*, &c. *that we may hear no more Clamour*, &c.

H And when the Plea is in the County, the Plaintiff may remove it without Cauſe, and the Defendant may remove it with Cauſe in the Writ, as in a Replevin. And if the Writ be removed in the Common Pleas by a *Pone*, and Proceſs be awarded againſt the Defendant according to the Statute, which is Summons, Attachment and Diſtreſs, *&c.* Then the Sheriff cannot make the Admeaſurement, but to extend all the Land particularly; and to return the ſame into the Common Pleas, and thereupon the Admeaſurement ſhall be made by the Juſtices.

I (*a*) And if the Guardian aſſign for Dower, *&c.* more than ſhe ought to have, and afterwards grant over his Eſtate, his Aſſignee ſhall not have a Writ of *Admeaſurement* (*b*).

And ſo if the Heir within Age aſſign unto the Wife more in Dower than ſhe ought to have, *&c.* The Guardian in Right may have a Writ of Admeaſurement; but if he grant over his Eſtate, his Aſſignee who is Guardian in *Fait* ſhall not have the Writ, becauſe it was a Thing in Action given to his Leſſor, *&c.* and the Heir ſhall have a Writ of *Admeaſurement of Dower*, for Dower aſſigned in the Time of his Anceſtor.

[149.]

14 Aſſ. pl. 4.
Perk. 19. d.
7 H. 2.
Admeaſurement 4.

A And if a Woman be endowed in Chancery by the King, *&c.* the Heir ſhall have a Writ of *Admeaſurement* againſt her if ſhe have more aſſigned to her for her Dower than ſhe ought for to have.

12 H. 6.
Admeaſurement 9.

(*a*) *Note*; Theſe Points are well reſolved. 1. If the Guardian aſſigns Dower, and grants over the Ward, the Grantee ſhall not have Admeaſurement. 2. If the Anceſtor aſſigns Dower and dies, the Guardian of his Heir ſhall not have Admeaſurement, but his Heir ſhall have it, and ſo it ſeems, though the Anceſtor was within Age at the Time. (*Vide Poſt.* 149.) 3. Where the King ſeizes a Ward, where he has no Right, the Ward ſued an *Ouſter le Main*, and had it, *Salva dote*; it ſeems in ſuch Caſe, the Ward ſhall have Admeaſurement; *contra* if he had been Aſſignee, or Grantee of the King. 7 *R.* 2. *Admeaſurement* 4. *Note* there, where a Diſſeiſor endows the Feme of more than a third Part, the Heir ſhall have an Aſſiſe.

(*b*) If on a Recovery of the third Part in Dower, the Sheriff aſſigns a Moiety, *&c.* the Tenant has Remedy againſt the Sheriff by Aſſiſe, or he may have a *Scire facias* againſt the Sheriff to aſſign *de novo.* 22 *R.* 2. *Execution* 165. See 21 *H.* 7. 29. If an Infant aſſigns for Dower more than he needs, he ſhall not avoid it by Entry. See 10 *Ed.* 3. 31. Dower ſhall not be admeaſured by a Writ of Dower. 19 *Ed.* 3. *Quare impedit* 154.

7 R. 2. 17 Ed. 3. 67. 7 Ed. 2. Admeaſurement 13. And if the Guardian do aſſign Dower more than ſhe ought to have, the Heir during his Nonage ſhall not have a Writ of *Admeaſurement*, but if he himſelf aſſign more for Dower than ſhe ought to have, *&c.* then it ſeems reaſonable, that he himſelf during his Nonage have the Writ of *Admeaſurement of Dower.* B

5 Co. 12. a. (*a*) But if the Wife after the Aſſignment of Dower do improve the Land, and make it better than it was at the Time of the Aſſignment; an Admeaſurement doth not lie of that Improvement. But if the Improvement be by Caſualty of a Mine of Coals or of Lead, which are in the Land, *&c.* which have been occupied in the Huſband's Time, the Doubt is the more; but ſhe cannot dig new Mines; for that ſhall be Waſte if ſhe ſo do. C

Dr. and Stud. 84. And if the Anceſtor dieth ſeiſed, and the Huſband die before he entreth into the Land, yet the Wife ſhall be endowed, although her Huſband had but a Poſſeſſion in Law. 7 *Ed.* 3. 66. 21 *Ed.* 3. 31. 3 *H.* 7. 103. D

Perk. 89, 91. 3 H. 7. 5. 21 Ed. 3. 21. But a Man ſhall not be Tenant by the Courteſy of the Wife's Land, if his Wife had not a Poſſeſſion in Deed, if it be not in ſpecial Caſes; as of Advowſon or Rent, where ſhe dieth before the Day of Payment of the Rent.

N. Br. 8. And in that Caſe, if the King's Tenant die ſeiſed, and the Heir die before he enter; then the Wife ſhall be endowed.

1 H. 7. 17. 4 H. 7. 1. But if the Heir enter and intrude upon the King's Poſſeſſion, and afterwards die before he ſueth his Livery; the Wife ſhall not be endowed by the Statute of *Prærogativa Regis*, *cap.* 12. which is, that if the Heir intrude upon the King's Poſſeſſion, that *Nullum accreſcit ei liberum tenementum*, *&c.*

2 H. 4. 7. Perkins 96. d. (*b*) Where a Woman taketh a Leaſe for Years of Land, ſhe ſhall not be endowed of the ſame Land during the Term. E

41 Ed. 3. 30. And where the Eſtate which the Huſband hath during the Marriage is ended, there the Wife ſhall loſe her Dower. As if Tenant in Tail do diſcontinue in Fee, and afterwards taketh a Wife and diſſeiſeth the Diſcontinuee, or the Diſcontinuee doth enfeoff him, and afterwards the Tenant in Tail dieth ſeiſed, his Heir is remitted, and the Wife ſhall loſe her Dower, becauſe the Heir is in of another Eſtate of Inheritance, than the Huſband had during the Coverture. F

And ſo if a Man have Title of Action to recover any Land, and afterwards he entreth and diſſeiſeth the Tenant of the Land, and dieth ſeiſed, and his Heir entreth, the Heir is remitted unto the Title which his Anceſtor had,

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(*a*) 14 *H.* 3 *Admeaſurement* 10. 13 *Ed.* 1. *Ibid.* 17.

(*b*) See accordant, where a Feme took the Commitment of the Guardianſhip by the King's Grant, without any Exception of Dower, and ſhe was barred of her Dower during the Heir's Nonage, 2 *H.* 4. 7. but if the Huſband be attainted, and dies, and the Feme takes a Leaſe for Years of the King's Grant of his Lands, and afterwards by Act of Parliament, or by Reverſal of the Judgment, (the Heir of the Huſband being in the King's Ward, for that the Tenements were intailed,) now ſhe ſhall have her Dower, becauſe it was before, (after) her Title of Dower commenced; and ſo if *A.* makes a Leaſe to *B.* for Years, and they intermarry, and *A.* dies within the Term, the Feme ſhall be endowed. 6 *H.* 4. 7, 8. Sir *John Cornwall*'s Caſe. See *Dyer* 76. a Feme Tenant at Will brings Dower of the ſame Lands.

and the Huſband's Wife ſhall loſe her Dower; for that Eſtate which the Huſband had is determined, for that was an Eſtate in Fee by Wrong, and the Heir hath the Eſtate in Fee which his Anceſtor had by Right. 16 *Ed.* 3. 21.

G (*a*) If a Man make a Gift in Tail, reſerving Rent to him and his Heirs, and afterwards the Donor hath a Wife, and the Tenant in Tail dieth without Iſſue, the Wife of the Donor ſhall not be endowed of the Rent, becauſe the Rent is extinct, for it was reſerved upon the State-tail which is ended: But although that the Tenant in Tail dieth without Iſſue, yet his Wife ſhall be endowed, becauſe the Land continueth and is not determined as the Rent is.

10 Ed. 3. Avowry 159. Perk. 63. d.
46 Ed. 3. 24. Finchden.

H If the Grandfather dieth ſeiſed, and after the Father dieth ſeiſed, and the Son hath the Land, and then the Wife of the Grandfather, is endowed of the third Part of the Land and dieth, yet the Wife of the Father ſhall not have Dower of that third Part, becauſe *dos ex dote peti non debet.*

Perkins 62. 45 Ed. 3. 13. Ant. 148. C. 45 E. Dower 5. 8 Ed. 2. Entry 75.

I And if the Huſband be Tenant in Common with two others in Fee of certain Lands, and dieth, his Wife ſhall be endowed of the third Part of that Land, only with Metes and Bounds to hold in Common, *&c.*

K And if a Wife be endowed of a Mill, or of an Office, ſhe ſhall have the third Part of the Profits thereof aſſigned unto her, and ſhe ſhall have a Freehold in the third Part of the Mill, *&c. M.* 45 *Ed.* 3.

45 Ed. 3. Dower 50. 1 H. 5. 1. Perkins 67. g.

L (*b*) A Woman at the Age of nine Years or more at the Death of her Huſband, ſhall have Dower of his Land. And if ſhe be of leſs Age at the Death of her Huſband, then ſhe ſhall not have Dower.

Litt. 8. 12 H. 4. 1. Dr. and Stud. 13.

M (*c*) If a Woman be endowed, and afterwards loſeth by Action tried, if ſhe pray in Aid of him in the Reverſion, ſhe ſhall be new endowed of that which remaineth (*d*).

N If the Huſband exchange Land, *&c.* and afterwards dieth, if the Wife have Dower of the third Part of the Land taken in Exchange, ſhe ſhall not have Dower of the other Land, *&c.* which was given in Exchange.

1 Inſt. 31. b. Perk. 63.

O If a Woman be Guardian in Socage, and ſhe bring a Writ of Dower againſt a Stranger, he may plead, that ſhe holdeth other Land in Socage of which ſhe may endow herſelf, *de le pluis beale*, and then the Wife upon that may endow herſelf of thoſe Lands unto the Value of the third Part, which ſhe ought to have of the other Lands which the Guardian holdeth, *&c.* And whether ſhe may endow herſelf of the *pluis beale* unto the Value of the third Part which ſhe ought to have of her Huſband's Land or no, *Quære*; for ſome

Litt. 10 d. That he hath a Freehold.
45 Ed. 3. 6. Candiſh. acc. to this here.

(*a*) *Note*; If Rent be granted to *I. S.* and his Heirs on Condition, that if the Grantee or his Heirs die, his Heir within Age, the Rent ſhall ceaſe during the Nonage, *&c.* the Feme ſhall recover Dower of the Rent againſt the Tertenant, but *ceſſat Executio* during the Nonage. 12 *Ed.* 3. *Dower* 11. 22 *Ed.* 3. 19. 10 *H.* 7. 13. 5 *Ed.* 2. *Dower* 153. 10 *Ed.* 3. 21. *Perk.* 62, 63. 46 *Ed.* 3. 24. 12 *Ed.* 3. *Cond.* 11.

(*b*) *Co. Lit.* 33. *a.* 7 *H.* 6. 11. 12 *R.* 2. *Dower* 54. of whatſoever Age the Husband be. See 1 *Inſt.* 384.

(*c*) See 4 *Ed.* 3. 25, 36. 50 *Ed.* 3. 7. Yet there ſeems to be this Diverſity, if a Feme be endowed by a Diſſeiſor, ſhe ſhall have the Warranty, *&c.* but if ſhe recovers the Lands only, which are granted over by the Heir, ſhe has loſt her Warranty againſt the Grantee. 7 *Ed.* 3. 7. 21 *Ed.* 3. 48. 10 *Ed.* 3. *Quid Juris* 41.

(*d*) And ſhe ſhall have Election to be endowed of what Part thereof ſhe will. See *Co. Lit.* 31. *b. Perk.* 63.

hold, that Dower *de pluis beale* ſhall endure but during the Minority of the
Heir who is in Ward.

[150.] The Son would have endowed his Wife of a Reverſion of Land which one A
held for Life *ex aſſenſu Patris*; and it was holden, that it was not good,
M. 4 *Ed.* 3. becauſe it was not in Poſſeſſion; whereof a Right of Dower may
be claimed. 4 *Ed.* 3. *Dower* 117. 6 *Ed.* 3. 34. *Perk.* 86.

22 Ed. 3. And the Writ of Dower *ex aſſenſu Patris* lieth as well againſt the Guardian B
Dower 131. as againſt the Tenant of the Freehold.

Perk. 64. 2. If the Tenant fore-judge the *Meſne*, yet the Wife of the *Meſne* ſhall be en- C
dowed. *Perk.* 84.

5 Ed. 3. If a Man recover in Value againſt the Huſband by a Warranty *Aunceſtrel*; D
Dower 149. yet the Wife ſhall be endowed, becauſe the ſame is by Force of the War-
ranty made, and not by reaſon of eigne Title to the Land. 5 *Ed.* 3. *Dower.*
139.

The younger Son ſhall not aſſign Dower to his Wife *ex aſſenſu Patris* of E
the Father's Land, becauſe he is not Heir Apparent. *Litt.* 9. *a.*

Perk. 68. 2. If the Huſband enter into Religion, the Wife ſhall not have Dower during F
13 Ed. 19. his Life. *Perk.* 61, 32.

Dower 161. The Wife ſhall have the third Part of the Advowſon for her Dower. G
1 *Ed.* 1. *Dower* 176.

43 Ed. 2. 19. If the Wife do elope from her Huſband, and remain with the Adulterer, H
Perk. 70. b. ſhe ſhall loſe her Dower; but if ſhe remain in Adultery upon the Huſband's
Lands or Tenements, ſhe ſhall have Dower, becauſe the ſame is not an
Elopement. 1 *Inſt.* 32. *b.* *Perk.* 170. *D.*

If the Huſband be attainted of Felony by Outlawry or otherwiſe, ſhe ſhall I
loſe her Dower.

If one Joint-tenant make a Feoffment of his Part, his Wife ſhall not be K
endowed becauſe her Huſband was never ſole ſeiſed. 34 *Ed.* 1. *Dower* 179.

Endowment *ex aſſenſu Matris* is good, but *ex aſſenſu Fratris* it is holden it L
is not good. 9 *H.* 3. *Dower* 19. 8 *Ed.* 2. *Dower* 167. *contr.*

3 H. 6. 4. And Dower *ex aſſenſu Patris* after the Marriage is good.

Leſſee for Life maketh a Feoffment in Fee; his Wife ſhall have Dower againſt the Feoffee, but not againſt the Leſſor.

If a Man marry a Woman in a Chamber, Dowment *ad oſtium Cameræ* is M
not good. 2 *H.* 3. *Dower* 198. 1 *Inſt.* 34. *a.*

Dowment *ad oſtium Eccleſiæ* of the Moiety of the Land is good.

And a Woman married in a Chamber ſhall not have Dower by the Com- N
mon Law, *H.* 16 *H.* 3. *Quære* of Marriages made in Chapels not conſecrated,
&c. for many are by Licence of the Biſhop married in Chapels, *&c.* And it
ſeemeth reaſonable, that in ſuch Caſes ſhe ſhall have Dower. 1 *Inſt.* 34. *b.*
10 *H.* 3. *Dower* 200, 201. *Perk.* 61.

And in ſome Places the Wife ſhall have the Moiety in Dower, as in Gavel- O
kind. 1 *Inſt.* 33. *b.* *Litt.* 8.

And in ſome Cities ſhe ſhall have all by the Cuſtom which is called Free P
Bench, *&c.* And *Glanvil* ſaith, that *ad oſtium Eccleſiæ* a Man cannot aſſign
more than the third Part in Dower, and if he do, the Wife ſhall be admea-
ſured, *&c.* but leſs may be aſſigned by Law; yet at this Day it ſeemeth,
that the Aſſignment *ad oſtium Eccleſiæ* of more than the third Part is good,
and ſhe ſhall not be admeaſured for it. *Ibid. contr.* 1 *Inſt.* 36. *a.*

Q And the Wife ſhall not be diſtrained in the Lands which ſhe holdeth in Dower, for the Debts of the Huſband in his Life due to the King, nor in the Lands of Inheritance of the Wife, nor in the Lands which ſhe hath by Purchaſe made by the Huſband to him and his Wife, and unto their Heirs; and if ſhe be diſtrained by the Sheriff, ſhe may ſue forth ſuch Writ. 50 *Aſſ.* 5. It is otherwiſe of a Leaſe for Years. See 8 *Co.* 171. *Fleetwood*'s Caſe.

The King to the Sheriff, &c. *Whereas according to the Law and Cuſtom of our Realm of* England *Women ought not to be diſtrained to pay the Debts of their Huſbands in the Lands and Tenements which they hold in Dower of the Gift of their Huſbands, or which are of their own Inheritance, or which they purchaſed to themſelves, and you diſtrain* B. *who was the Wife of* A. *in her Lands and Tenements which are holden in Dower of the Gift of the aforeſaid* A. *and which were alſo of the Inheritance of her the ſaid* B. *as we have received Information from her Complaint: We command you, that you do not cauſe her the ſaid* B. *to be diſtrained in her Lands and Tenements which are holden in Dower, or which are of her own proper Inheritance, or of the Purchaſe of her the ſaid* B. *to pay the Debt of the ſaid* A. *ſome time her Huſband, againſt the Law and Cuſtom aforeſaid; and the Diſtreſs which*, &c. *cauſe to be delivered to her*, &c. *Witneſs*, &c.

There is another Form of Writ in the Regiſter for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not diſtrain the Wife in thoſe Lands which ſhe holdeth in Dower, or of her own Inheritance, for the Huſband's Debt; but that Writ hath theſe Words in the End of the Writ, *Yet, ſo long as the Heirs and Executors of the Teſtament of him the ſaid* A. *have not ſufficient Diſtreſs to render to us thoſe Debts*, &c. And by theſe Words in the Writ it ſeemeth, that if the Heir of the Executors have not ſufficient of Lands or Goods to pay the Debt, that the Wife ſhall be charged and diſtrained for the Debt of the Huſband in thoſe Lands. But it ſeemeth reaſonable, that the Wife ſhall not be charged or diſtrained for the joint Purchaſe made to her Huſband and her, nor for her Lands of Inheritance, nor in the Lands wherein ſhe hath Title of Dower before the Huſband become (*a*) indebted unto the King. And that the firſt Writ is according to Law for thoſe Caſes. But if the Husband be indebted unto the King before ſhe have Title of Dower, it ſeemeth to be otherwiſe.

And there is another Writ in the Regiſter for the Wife directed to the Sheriff, that he do not diſtrain her in Lands or Tenements which her Huſband and ſhe purchaſed jointly before the Huſband was indebted to the King; if they purchaſe the Land jointly to them in Fee, the Lands after the Death of her Huſband in the Hands of the Wife and her Heirs ſhall be diſcharged of the Debt; and if he be diſtrained, that he deliver them again to the Wife.

And by the ſame Reaſon, although the Huſband be before indebted to the King; that if he and ſhe purchaſe the Land jointly in Fee to them, after the Death of the Huſband, the Wife and her Heirs be diſcharged of that Debt. And there is another Writ in the Regiſter for the Tenant in Dower, directed to the Sheriff, that he do not diſtrain the Wife for the Huſband's Debt, be

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(*a*) See 40 *Aſſ.* 36. 50 *Aſſ.* 5. *Dyer* 224. Sir *William St. Loe*'s Caſe, acc.

cauſe that the Heir, who ought to pay the ſame out of the Lands, is within Age, and in Ward to the King. Or becauſe that other Tenants who ſhould be charged with the Payment thereof, are omitted (*a*).

And ſo it ſeemeth, the Lands of the Tenant in Dower ſhall be diſcharged, if there were other Lands of the Huſband to pay the Debt. And thoſe Writs appear in the Regiſter, fol. 142, 143.

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* V. 50 Aſſ. 5. Br. Charge 34. The Huſband and Wife before Marriage purchaſe a Leaſe for Years, the Huſband dieth, the Leaſe extended for the King's Debt.

A * And another Writ directed to the Sheriff, that he do not diſtrain the Wife who holdeth Lands in Dower for the Debts of the Huſband which he owed to the King before the Contract of Marriage between him and his Wife, nor the Lands which the Huſband and Wife purchaſed jointly in Fee, for the Huſband's Debts, which he became Debtor for before the Purchaſe. And ſhe may have ſuch Writ out of the Chancery directed unto the Treaſurer and Barons of the Exchequer, commanding them that they inquire thereof, and if they find the ſame, that they ſurceaſe and diſcharge the Wife with this Proviſo in the Writ; *Provided that theſe Debts be levied upon the Executors and Heir of the aforeſaid* A. *and upon the Tenants of the Lands which were his, and which of Right ought to be charged therewith, as is juſt. Witneſs*, &c. *Contra* of a Leaſe for Years. 50 *Aſſ.* 4.

Writ de Conſuetudinibus & Servitiis.

a Ed. 3. Droit 28.

B THE Writ of Cuſtoms and Services is in its Nature a Writ of Right, and lieth ſometimes for the Lord who hath a Fee in the Seigniory, and ſometimes for the Tenant in Tail of the Seigniory, or for Tenant in Dower, or Tenant for Life, or for him that hath a leſs Eſtate than a Fee, and the Writ is Cloſe, and not Patent, and ſhall be directed unto the Sheriff, and ſhall be returnable ſometimes into the Common Pleas, at the Pleaſure of him who ſueth the Writ. And that Writ may be ſued in the County before the Sheriff by a *Juſticies.*

C And the Writ lieth where the Tenant doth deforce the (*b*) Lord of the Service which he ought to do, or of the Rent which he ought to have, as well as of Service. And the Form of the Writ which is returnable in the Common Pleas is,

D *The King to the Sheriff*, &c. *Command* A. *that*, &c. *he do to* B. *the Cuſtoms and Services which he ought to do to him* (*c*) *for his Freehold, which he holds of him in* G. *as in Rents, Arrearages, and other Things*; or thus, *in Homage, Reliefs, and other Things*; or thus, *in Suits of Court, and other Things, and unleſs*, &c.

And if the Party were not ſeiſed of the Services and Tenements which he claimeth, but his Anceſtor, then he ſhall not ſay in the Writ, *ut in arreragiis, &c.* But Omiſſion ſhall be made in the Writ of the Services.

(*a*) See *Rot. Parl.* 18 *Ed.* 1. *fol.* 14. acc.

(*b*) *Viz.* Againſt the Meſne, but not againſt the Tertenant. 31 *Aſſ.* 31.

(*c*) *Note*; If the Writ be *Debet & Solet*, no View lies *per Shard.* 11 *Ed.* 3. See 18 *Ed.* 3. *View* 161.

E And if the Writ be ſued in the County before the Sheriff, then the Writ is ſuch:

The King to the Sheriff, &c. *Juſtice* A. *that*, &c. *he do to* B. *the Cuſtoms and right Services*, &c. (as above) *as he can reaſonably ſhew that*, &c. *that we may hear no more*, &c.

F And a Man may ſue ſeveral Tenants by one Writ of Cuſtoms and Services by ſeveral *Præcipes* in the Common Pleas, or by one Writ and diverſe *Juſtic'* in the Writ, which ſhall be directed unto the Sheriff to hold Plea upon them. But if the Writ of Cuſtoms and Services be ſued againſt ſeveral Tenants by ſeveral *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* ſhall be put together, thus: *Command* A. *that*, &c. *he do to* B. *&c. and command* C. *that*, &c. *he do to* D. *&c. and command* F. *that &c. he he do to* G. *&c.* And in the laſt *Præcipe* ſhall put this Clauſe, *In Rents and other Things*, and this Word *Arrears* ſhall be left out.

G And when the Writ is in the Right only, then he ſhall count of the Seiſin of his Anceſtor, and the Writ only in the *Debet*; but when he counts of his own Seiſin, then the Writ is in the *Debet & ſolet*, *&c.*

2 Ed. 2. Fitz. Droit 28.

H And Diſclaimer lieth for the Tenant in this Writ againſt the Demandant (*a*).

I And note, that if he ſay in the Writ, *As in Rents and Arrears*, &c. that theſe Words prove that the Demandant himſelf was ſeiſed of the Services, and then if he count in ſuch Writ of Seiſin of his Anceſtors, and not of his own Seiſin, the Writ ſhall abate; *quod vide* 30 *Ed.* 1. Title *Droit.*

N. B. 38. the Diſclaimer ought to be in a Court of Record and not in the County.

K (*b*) But if he will bring a Writ of Cuſtoms and Services of the Seiſin of Anceſtors, he ought to leave theſe Words out of the Writ, *As in Rents and Arrears*, &c.

And a Writ of Cuſtoms and Services doth not lie againſt Tenant in Frankmarriage, until the fourth Degree be paſt, *&c.* if not, that he hath done Homage to the Lord, *&c.* for by ſo doing he is concluded, *&c.*

L And if a Man will bring a Writ of Cuſtoms and Services againſt any Tenant, and by his Count demand Homage, then the Writ ought to make ſpecial Mention thereof, as to ſay, *As in Homage*, &c. otherwiſe the Writ ſhall abate.

M And if a Man holdeth divers Manors in ſeveral Counties by one Service, *&c.* if the Lord be deforced or kept from his Services, he ſhall have ſeveral Writs of Cuſtoms and Services, for each County one Writ, and ſhall have them returned at one Day, in the Common Pleas, and then he ſhall count upon them, as his Caſe is, which ſee in the Title of *Droit*, 30 *Ed.* 1.

Droit 75.

N And note, that this Writ is a *Præcipe quod faciat*, *&c.* and where he demandeth Land, then the Writ is *Præcipe quod reddat*, *&c.* and in this Writ the Miſe ſhall be joined, if the Writ be brought by Tenant in Fee of the Tenancy, by him who hath a Fee in the Seigniory. But if the Writ be brought by Tenant in Dower, or Tenant in Tail, againſt the Tenant in Fee-ſimple, it is a Queſtion how the Miſe ſhall be joined. But, I think, the Miſe ſhall be joined in that Caſe, and the Weakneſs of the Eſtate on the Part of the De-

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(*a*) See *F. Droit* 28, 49. 7 *Ed.* 3. 5. *b.* (*b*) 47 *H.* 3. *Droit* 52. 31 *Ed.* 1. *Droit* 67.

[152.] mandant ſhall not out the Tenant of the Plea, which the (*a*) Law giveth him to join the Miſe; but if the Writ be brought againſt the Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, and then they may join the Miſe with the Demandant, *&c.* But where the Demandant, who hath the particular Eſtate, bringeth the Action, although he pray in Aid of him in the Reverſion to join the Miſe, it is hard to be done, *&c.* But it ſeemeth reaſonable, that the ſame Law which enableth him to bring the Action, the ſame Law ought to enable him for to join the Miſe upon the Plea of the Tenant. 7 *Ed.* 3. 5. *b. per Herle.*

Writ of Annuity.

A Writ of Annuity lieth, in Caſe, where a Man granteth unto another a yearly Rent for Life, or for Years, or in Fee out of his Lands, or out of his Coffers, or to receive from his Perſon yearly at a certain Day; now the Grantee may ſue a Writ of Annuity for the ſame, *&c.* if he be behind at the Day of Payment, *&c.* And if it be granted out of the Land with a Clauſe of Diſtreſs, then he may chuſe either to diſtrain for the ſame, and make it a Rent-charge, or he may bring a Writ of Annuity for the ſame. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot diſtrain for it after. And in like manner, if he do diſtrain for it and avow, then he ſhall not ſue a Writ of Annuity for the ſame Rent. But if a Man grant a yearly Rent for Life, for Years, or in Fee, and doth not expreſs in the Grant that it ſhall be taken out of any Lands or Tenements, nor any Diſtreſs granted for Non-payment thereof, then it is merely taken for an Annuity; and he ſhall not have any other Remedy for the ſame, but a Writ of Annuity. A

(*b*) And this Writ may be ſued before the Sheriff in the County by *Juſticies* as well as in the Common Pleas; and the Form of the Writ in the County is ſuch: B

The Plaintiff in Annuity had Judgment to recover Damages, and thereupon brought a Scire facias in B. R. to execute Judgment, and good. 24 Ed. 3. Fitz. Meſne.

The King to the Sheriff, &c. *We command you, that you juſtice* A. *that juſtly*, &c. *he render to* B. *one hundred Marks, ten Quarters of Wheat and twenty Robes which are in Arrear to him, of the yearly Rent of one hundred Shillings, two Quarters of Wheat and one Robe which he owes to him, as he ſaith, as he can reaſonably ſhew that he ought to render to him, that we may hear no more Clamour*, &c.

(*a*) If one recovers in a Writ of Cuſtoms and Services, he ſhall not have a *Scire facias* in another Writ of Execution, but only *Diſtringas*, *&c.* 10 *Ed.* 3. 15. 17 *Ed.* 3. 29. yet ſee 18 *Ed.* 3. 23. Execution ſhall be always had by *Scire facias*, notwithſtanding (another) Execution had before. *Vide infra* B.

(*b*) *Note*; By *Salder*, if the Defendant ſhews an Acquittance of all Arrears, the Plaintiff ſhall recover his Annuity, and have always a *Scire facias*, or a *Fi' Fa'* afterwards. 30 *Ed.* 3. 22. See where nothing was in Arrear, but pending the Writ, and the Abbot recovered on a Plea to the Title, and had Judgment for the Annuity, and alſo for the Arrears, 39 *Ed.* 3. 38. but in a *Scire facias* he ſhall not recover the Arrears pending the Writ. 9 *H.* 12. adjudged in *Diggs*'s Caſe.

And the Form of the Writ in the Common Pleas is,

Command A. *that juſtly*, &c. *he render to* B. *one hundred Marks and the Moiety of three Garments with coſtly Fur, and of two Garments with fine Linen, which are in Arrear to him, of the yearly Rent of ten Marks, and the Moiety of one Garment with Fur and of one Garment with fine Linen, which he oweth to him*, &c. *and unleſs*, &c.

34 H. 6. 20.
3 H. 6. Annuity 2.
16 Ed. 3. Annuity 22.

If a Man bring Annuity and the ſame extinguiſh or determine pendent the Writ, the Plaintiff cannot have Judgment in the Writ, but is put to his Action of Debt. See 2 H. 6. 8. And Note, that Detinue pro quodam Scripto de debito, lies for a Deed of an Annuity. 15 Ed. 3. Brief 682.

C And note, that in that Writ the Form is, *Quem ei debet*, where he demandeth other Thing than Money. And yet in a Writ of Debt the Form is, that he ſay in the Writ, (*a*) *Quas ei debet*, if not, that he demand Money; for if he demand Robes or Corn, or ſuch like Chattels, the Writ ſhall be, *Quæ vel quas ei detinet*, and not *debet*, *&c.*

And in Debt if a Man demand Money, and alſo ten Quarters of Wheat, then the Form of the Writ is,

Command A. *that juſtly*, &c. *he render to* B. *ten Pounds*, &c. *which he owes to him, and ten Quarters of Wheat which he unjuſtly detains from him*, &c.

D And if a Man have an Annuity of twenty Pounds to receive of *A.* and he grant ten Pounds of the ſame to another Man to receive of *A. A.* ſhall not be charged by that Grant, but the Grantor only by Writ of Annuity: But if he had granted ten Pounds, Parcel of the ſaid Annuity, it ſeemeth then that the Grantee ought to charge him who ought to pay the twenty Pounds by a Writ of Annuity. 9 H. 6. 12. & 13.

E And the Writ of Annuity ought to be brought in the County where the Grant was made; but an Annuity to receive from a Man of Religion, or a Body Corporate, or from a Church, ought to be brought where the Church or Houſe is, or where the Seiſin is alledged.

F And the Heir ſhall be charged by a Writ of Annuity upon the Grant of the Father, if he have Aſſets by Deſcent. But an Annuity ſhall not be maintainable againſt the Heir by Preſcription, becauſe it cannot be known whether he hath by Deſcent from the ſame Anceſtor, *&c.* by whom the Annuity was firſt granted. 42 Ed. 3. 5. acc. 15 Ed. 4. 16.

(*a*) *Note* alſo; This Writ does not lie after the Grant determined by Judgment, or otherwiſe, but Debt. 16 *Ed.* 3. *Annuity* 22. 15 *H.* 7. 1. and if the Annuity determines pending the Writ, it abates, and therefore ſee (16 *Ed.* 3. *Annuity* 22.) 11 *H.* 4. 34. if the Grantee of an Annuity for Life recovers the Annuity, and Arrears by Writ of Annuity, and two Years are Arrear after the Judgment, and then he dies, his Excentors ſhall have a *Scire facias* for the Arrears contained in the Judgment; but for the Arrears incurred after the Judgment, he ſhall have a Writ of Debt, and not a *Scire facias*; for the Annuity is determined, ſo that he cannot recover it as an Annuity, *per Cur'*; but it is there ſaid by *Hort.* and *Thirn.* againſt the Opinion of *Hankf.* that where the Grantee of an Annuity for Life with a Remainder to him for twenty Years, recovers in Annuity and dies, his Executor ſhall have a *Scire facias* always during the Term, becauſe they have the Eſtate continuing in them, during the Term; *Quære* of an Annuity after the Grant determined. 9 *H.* 6. 16. If one recovers an Annuity, and the Annuity is after in Arrear, and then he dies, his Executors ſhall not have *Scire facias*, but Debt. 11 *H.* 6. 38.

V. 14 H. 4. 18.

And a Writ of Annuity ſhall be maintainable againſt a Parſon upon a Grant made by his Predeceſſor with the Aſſent of the Patron and Ordinary; and ſo upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo.* G

An Annuity granted by the Biſhop with the Confirmation of the (*a*) Dean and Chapter, ſhall bind the Succeſſor of the Biſhop.

(*b*) And if a Man grant unto another forty Shillings, or a Robe, yearly at ſuch a Day, *&c.* after the Day he may demand the one or the other, at his Election. 8 *R.* 2. *Annuity* 53. H

16 Ed. 3. Annuity 34.

And an Annuity ſhall be maintainable by a Parſon againſt a Vicar, upon an Ordinance of the Ordinary, if he have *Quid pro quo.*

20 Ed. 3. Annuity 32. 8 R. 2. ib. 53.

Upon Debate of an Advowſon between a Prebend and a Prior, the Ordinary made a Compoſition and Ordinance, that the Prebend ſhould have an Annuity of twenty Shillings, and the Prior the Advowſon for ever, and that did charge the Prior in a Writ of Annuity and his Succeſſors, (*c*) *T.* 9 *R.* 2. I

1 Ma. Dyer 92.

And in the Time of Vacation the Patron and Ordinary may by their Grant charge the Church for ever, as appeareth in the ſame Year. K

9 H. 6. 33.

And if the King grant one an Annuity for Life or Years, he ought to expreſs in the Grant by whoſe Hands he ſhall receive the Annuity, as to ſay, *By the Hands of the Sheriff of* S. or *of our Bailiff of our Manor of* S. and then the Bailiff or Sheriff ſhall have Allowance upon his Patent ſhewed, if he hath paid the ſame; and if he have not ſuch Words in the Grant of Annuity, the Grant is void, for he cannot ſue the King for it, and no Perſon is bounden to pay the ſame unto him, if he be not expreſſed and named in the Patent, *&c.* (*d*) And the Proceſs in a Writ of Annuity is Summons, Attachment and Diſtreſs: And for Default of Diſtreſs, *&c.* Proceſs of Outlawry by the new Statute made *Anno* 23 *H.* 8. *cap.* 14. L

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If a Man grant 10s. Parcel of Annuity of 20s. and in Truth there is no ſuch Annuity, the Grant is void. But if it be granted to receive out of ſuch a Sum, and there is no ſuch Sum, yet the ſame is good to charge the Perſon of the Grantor. Vide Annuity 5. to receive in 10 l. or de 10 l. no Difference.

(*a*) Or by the Ordinance of the Commiſſary confirmed by the Biſhop, 14 *H.* 4. 18. on a Debate of Court before the Commiſſary. See 11 *H.* 4. 84. and *Note*, the Ordinance is to be under Seal. 16 *Ed.* 3. *Grants* 654.

(*b*) See accordant 11 *Ed.* 3. *Annuity* 27. 29 *Aſſ.* 55. But *Note* a Diverſity, if it be a Thing of Continuance, as Annuity or Rent, there he ought to bring his Writ of Annuity, or Aſſiſe, in the Disjunctive; *contra* if it be *pro hac Vice* only. 9 *Ed.* 4. 26. *per Litt.* 13 *Ed.* 4. 4. 43 *Ed.* 3. *Bar.* 19. 3 *Aſſ.* 175. 11 *Aſſ.* 8. *L.* 5 *Ed.* 4. 6. 17 *Ed.* 3. 73. 29 *Aſſ.* 55.

(*c*) *Viz.* By a Releaſe of the Right of Patronage. 31 *Ed.* 3. *Grants* 90.

(*d*) And if the Defendant makes Default after Appearance, a *Diſtringas* ſhall iſſue *ad audiend' Judicium*, 2 *H.* 4. 1. *per Cur*; yet 29 *Ed.* 3. 3. a *Diſtringas ad reſpondend'* iſſued (to the Tertenant) where the Defendant made Default at the Day of *Procedendo*, after Aid by him had of the King and the Ordinary. 11 *H.* 4. 6. Judgment on Default of the Parſon at the Day of Summons to them had and returned. See 8 *H.* 6. *Judgment* 262. See a *Diſtringas* againſt a Parſon in lieu of a *Petit Cape*, and if he then makes Default, Judgment final.

Writ de Procedendo ad Judicium.

B THE Writ to proceed unto Judgment lieth where Judges of any Court delay the Party, Plaintiff or Defendant, that they will not give Judgment for him when they ought ſo to do, *&c.* then the Party grieved ſhall have this Writ directed unto the Judges; and the Form of the Writ is ſuch: Poſt. 24.

The King to the Mayor and Sheriffs of London, *greeting: Becauſe the giving Judgment of the Plaint which is before you in our Huſting of* London *without our Writ, between* A. *and* B. *of a certain Treſpaſs to the ſaid* A. *committed by the aforeſaid* B. *as it is ſaid, hath taken up long Delay, to the great Damage of him the ſaid* A. *as we have received Information from his Complaint; We command you, that you proceed to give Judgment thereupon with as much Speed as it may be done, according to the Law and Cuſtom of the ſaid City. Witneſs,* &c.

C And upon that Writ he ſhall have an *Alias* and a *Pluries* directed unto him, if they will not proceed, and afterwards an Attachment upon that directed
D to the Coroners, *&c.* returnable into the King's Bench or Common Pleas, and it appeareth by the Writ that it lieth as well againſt Judges of Record as other Juſtices.

E (*a*) If any Man pray in Aid of the King in a real Action, and the Aid be granted, it ſhall be awarded, that he ſue unto the King in the Chancery, and the Juſtices in the Common Pleas ſhall ſtay until the Writ of *Procedendo in loquela* come unto them. 1 Ma. Dyer 10. the Opin. contra.

And then they may proceed in the Plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Juſtices ought not to proceed to Judgment, until the Writ cometh to them to proceed to Judgment, which is called a Writ *de Procedendo ad Judicium.* 7 R. 2. Aid de Roy 61.

And ſo it is, if the Defendant in a perſonal Action pray in Aid of the King, and the Aid be granted, now the Judges ought not to proceed until *Procedendo in loquela* comes unto them, and then they may proceed and try 27 H. 8. 9. Eliz. Dyer 101,257,258. V. 28 H. 6. 4.

(*a*) *Note*; In all Pleas, but in thoſe of Dower, where Aid of the King is granted, there is a Clauſe *quod non procedant ad Judicium Rege inconſulto.* But in a Writ of Dower, the whole Matter ſhall be diſcuſſed in Chancery before the Writ *de Procedendo* comes. 46 *Ed.* 3. 29. And *Note*; there ought to be in the *Procedendo* in Dower, an expreſs Clauſe to proceed to Judgment; otherwiſe, if the Writ only commands to do Right and Reaſon, Judgment ſhall not be given. 26 *Ed.* 3. 58. A *Procedendo ad Judicium* was *quod ad finalem Diſcuſſionem procedant*, and thereon the Judges gave Judgment. 29 *Ed.* 3. 12. 3 *Ed.* 3. 3. *Note*; If the Tenant in a *Præcipe* prays Aid of the King, by Reaſon of the Warranty, the Warranty ſhall be tried in the Chancery, and a Writ ſhall be ſent into *C. B.* to take the Inqueſt; but if they plead in Chancery, and there it appears, that the Demandant has Right, the King ſhall not have a Writ to *C. B.* reciting the Matter, and commanding them to ſuperſede, *&c.* for that Judgment ſhall be there given, *Quod Tenens eat inde ſine die,* 38 *Ed.* 3. 14. and *per Thorp,* there. The Right ſhall not be tried in Chancery, but in Caſe where the King has the Reverſion, the Parſon may, but does not pray in Aid, *&c.* 38 *Ed.* 3. 19 and therefore, if the King has a Releaſe of the Annuity, and pleads it, it ſhall not be brought into Chancery. For the Aid is granted only to maintain or ſupport the Parſon, although he pleads it. 19 *H.* 6. *per Newton.* See 13 *H.* 4. 3.

the Iſſues joined; but yet they ſhall not give Judgment until a Writ cometh to them to proceed to Judgment.

And if the King by his Writ certify to the Juſtices that the Lands are ſeiſed F into his Hands, *&c.* then they ſhall ſtay until the Writ *de Procedendo in loquela* be afterwards ſent unto them

And ſo, if it appear to Judges of (*a*) Record, that the Lands are ſeiſed into the King's Hands, or if it appear to the Court by pleading or ſhewing of the Party, that the King hath Intereſt in the Land, or ſhall loſe Rent or Service, there the Court ought to ſtay until they have from the King a *Procedendo in loquela*; and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a Man (*b*) have Aid of the King, the *Procedendo* ought to make Mention of the Aid-prayer, and recite the ſame in the Writ, commanding them for to proceed in the Plea, otherwiſe it is not good.

And

(*a*) *Viz.* In Aſſiſe, by the Teſtimony of the Eſcheator, or by Affirmance of the Aſſiſe in another Writ. See 11 *H.* 4. 39. But *Note*; If the King purchaſes pending the Writ, yet this ſhall not abate the Aſſiſe. 11 *H.* 4. 86. 9 *H.* 7. 9. and 15. although the Party does not pray Aid. See accordant 11 *H.* 4. 71. if it appears of Record, as by the King's Writ, *&c.* that the King has (Claims) Intereſt; and if it be after Verdict, the Juſtices ſhall not give Judgment; *contra* if it be only a Nude or bare Surmiſe of the Party *dehors*; but ſee 3 *H.* 6. 6. Aid not to be granted in Treſpaſs, without Prayer of the Party.

See a *Procedendo ad Judicium* after the Tranſcript of the Record certified into Chancery. 13 *H.* 4. 3.

(*b*) *Note*; 1. The Party cannot demand Aid after Adjournment of the Plea in another Term, for it ought to be demanded in the former Term, and before Plea pleaded. 3 *H.* 6. 5. *per Martin.* 2. His Aid-prayer is, where it is for his Advantage to have in Value, and then this ought to be ſpecially entered in the Courſe of his Aid-prayer, or otherwiſe he ſhall not have in Value. 9 *H.* 6. 4. Sometimes for Feebleneſs of the Party's Eſtate, to plead (or pray) it, then *per Cott.* the Entry is Judgment, *&c.* *Si Rege inconſulto.* See 15 *H.* 7. 10. where a Tenant at Will ſhall have Aid of the King thereupon by Reaſon of the Temporalties only by thoſe Words. See 9 *H.* 6. 3. *per Cott.* If one prays Aid of the King, becauſe of the Reverſion in him, if he ſays, that he holds for Life, the Reverſion in the King, it is good, without ſhewing any Deed; and by ſuch Plea, the Reverſion is in the King at his Pleaſure. 1 *H.* 7. 29. 11 *H.* 4. 86. 8 *H.* 6. 25. So his Bailiff ſhall have Aid.

Sometimes it is to try the King's Patents, as where the King confirms, *&c.* then only the Judgment is, *Si Rege inconſulto*, 28 *Aſſ.* 39. ſometimes it is for (to preſerve) the King's Intereſt, as 1 *Aſſ.* 1. and ſo for a Fee-farm Rent, *&c.* due to the King, 2 *H.* 7. 7. and then in caſe the King is not to loſe, no Aid ſhall be granted, as if one demands Land by a Title puiſne to the King's Intereſt. 35 *H.* 6. 56. *Note*; The Cauſe of the Aid is not traverſable. 9 *H.* 7. 15. 27 *H.* 8. 28. For when the Parties come into Chancery, if any Intereſt can be ſhewn in the King, although it be entred that it was only a Surmiſe; ſo if the Cauſe of the Aid be not ſufficient to prove an Intereſt in the King, yet if he can ſhew any other Cauſe, that is ſufficient, a *Procedendo* ſhall not be granted, till the King's Title be diſcuſſed, 8 *H.* 7. 11. and therefore if Aid be granted on ſuch a Cauſe, for which it is not of Right grantable, and afterwards a *Procedendo* is awarded, he ſhall not have Aid *de Novo* for another Cauſe. 9 *H.* 7. 8, 9. 3 *H.* 6. 6. adjudged. And *Note*; If Tenant in Fee-ſimple ſays, that he holds for Life, the Reverſion in the King, whereupon Aid is granted, if another Title be not ſhewn in the King, a *Procedendo* ſhall be preſently granted, and it is not ſufficient there to alledge, that the Land is held of the King's Manor, which is Antient Demeſne, for that the Tenant there has affirmed the Juriſdiction of the Court by the Aid prayed of the King, and it is no Miſchief to him, for if he (after) diſagrees to the Reverſion, if the Plaintiff recovers, he may have a Writ of Diſceit, 11 *H.* 4. 86. adjudged, and therefore, without ſome other

Matter

G And if Conuſance of Plea be granted, &c. in an Action real ſued in the Common (*a*) Pleas, and afterwards in the Franchiſe, and the Tenant pray in Aid of the King upon a good Cauſe, and hath the Aid granted; the *Procedendo* ſhall be parted to them in the Franchiſe.

H And if the King write unto the Juſtices to prorogue the Aſſiſe becauſe the Defendant is in his Service, yet the Juſtices ought to proceed, and not to ſtay for the ſame.

I And if Verdict paſs for the Plaintiff in Aſſiſe of *Novel Diſſeiſin* before the Juſtices of Aſſiſe, and before they give Judgment by a new Commiſſion new Juſtices are made, then the Plaintiff in the Aſſiſe may ſue forth a *Certiorari* directed unto the other Juſtices to remove the Record before the new Juſtices, that they may proceed unto Judgment; and the Form of the Writ is ſuch:

(*b*) *The King to his beloved and faithful* E. *greeting:* H. *hath ſhewed unto us, that whereas he lately arraigned a certain Aſſiſe of Novel Diſſeiſin before our beloved and faithful* H. *of* T. *and* B. *our Juſtices lately aſſigned to take the Aſſiſes,* &c. *by our Writ againſt* R. *&c. and others,* &c. *contained, of Tenements in* L. *and although you and the aforeſaid* B. *took that Aſſiſe according to the Law and Cuſtom of our Realm; nevertheleſs, by reaſon of our certain Commiſſion made to our beloved and faithful* I. *of* C. *and* I. *of* I. *of all Aſſiſes, Juries and Certificates before our Juſtices whomſoever in the County aforeſaid, by our Writs arraigned and taken, Judgment upon the Verdict of the Aſſiſe aforeſaid yet remains to be given, to the great Damage of him the ſaid* H. *wherefore it is expedient and neceſſary, that the aforeſaid* I. *of* C. *and* I. *may be certified upon the Record and Proceſs of the Aſſiſe aforeſaid had before you and the aforeſaid* B. *We command you, that without Delay you ſend the Record and Proceſs,* &c. *touching the ſame, to the aforeſaid* I. *of* C. *and* I. *under your Seal diſtinctly and openly, and this Writ; We alſo command* I. *of* C. *and* I. *that having received and ſeen the Record and Pro-*

Matter ſhewn, a *Procedendo* ſhall be granted. And *Note*; if the King be intitled to the Reverſion or Remainder by purchaſe *de Novo*, and not only by Plea of the Tenant on the Aid prayed, no Search ſhall be granted further, if Aid has been demanded, or if the King has leaſed to the Tenant, &c. See 11 *H.* 4. 86. 9 *Ed.* 4. 12. and in Aid granted in perſonal Actions, no Search ſhall be for the King. 27 *H.* 8. 28.

(*a*) See 8 *Ed.* 3. *Procedendo* 7. and therefore, where the Tenant of a Franchiſe prays Aid of the King, and thereupon the Plaintiff ſues a Reſummons, at the Reſummons Conuſance was granted again. See 10 *Ed.* 3. 3. and 21 *Ed.* 3. 38. yet it was ſaid, that thoſe in the Chancery would not grant a Writ to the Bailiffs of the Franchiſe.

(*b*) In an Aſſiſe, the Party alledges, that the Lands were ſeized into the King's Hands, and found ſo by Examination, and afterwards a *Procedendo in loquela non ad Judicium* was granted, and the Parol put without Day, by the not coming of the Juſtices, and a general Re-attachment was ſued before new Juſtices in the ſame County, and all the Records delivered to them, and on a Plea of *Null Tort*, &c. the Inqueſt found for the Plaintiff, and now a ſpecial Writ of the King came, reheaſing all the Matter, and commanding, *Quod non procederent ad Judicium Rege inconſulto*; and it was adjudged, 1. That by the general Re-attachment, the Plea of the Party was not terminated. 2. For that no Cauſe to give Day, *ad ſequend' verſus Regem*, appears before Verdict, the Verdict was well taken; otherwiſe, if the Juſtices had aſſerted it on the Record, that it appeared by Plea of the Party, and Examination, that the Lands were in the King's Hands. 3. That they could not proceed to Judgment, without a *Procedendo ad Judicium*. 9 *H.* 6. 40.

ceſs aforeſaid, they proceed to Judgment aforeſaid, according to the Law and Cuſtom of our Realm. Witneſs, &c.

And the Party Plaintiff may ſue another Writ unto the new Juſtices, that when the Record is ſent unto them by the old Juſtices, that they receive and look upon the Record, and then to proceed to Judgment; and the Form of the Writ is ſuch:

The King to his beloved and faithful R. *of* C. *and* I. *of* I. &c. *Juſtices aſſigned to take the Aſſiſes,* &c. (as above until) *before our beloved and faithful* I. B. *and you the aforeſaid* I. *of* C. *our Juſtices lately,* &c. *of Tenements in* L. *and afterwards, at the Proſecution of him the ſaid* H. *ſuggeſting to us that the aforeſaid* B. *and you the aforeſaid* I. *of* C. *had taken that Aſſiſe, and had deferred giving Judgment,* &c. *We commanded the aforeſaid* B. *that he ſhould diſtinctly and openly ſend the Record and Proceſs of the Aſſiſe aforeſaid had before him and you the afore-*
[154.] *ſaid* R. *of* C. *together with the original Writ,* &c. *to you the aforeſaid* R. *of* C. *and* I. *of* I. *and our beloved and faithful* C. *of* L. *our Juſtices afterwards aſſigned,* &c. *and our Writ which thereupon came to him, and by our other Writ we gave in Charge to you and to the aforeſaid* R. *of* C. I. *of* I. *and the aforeſaid* C. *of* L. *that having received and ſeen the Record and Proceſs aforeſaid, you ſhould proceed to give Judgment, according to the Law and Cuſtom of our Realm; and although the ſaid* B. *hath ſent the Record and Proceſs of the Aſſiſe aforeſaid before you the aforeſaid* R. *of* C. I. *of* I. *and the aforeſaid* C. *of* L. *nevertheleſs Judgment in the Aſſiſe aforeſaid yet remains to be given, to the great Damage of him the ſaid* A. *We therefore willing to ſpeed the Matter aforeſaid as much as may be according to the Law and Cuſtom of our Realm, and that compleat Juſtice be further done to him the ſaid* H. *do command you, that you, or two of you, having ſeen and examined the Record and Proceſs aforeſaid, proceed to give Judgment aforeſaid according to the Law and Cuſtom of our Realm. Witneſs,* &c.

A And upon that Writ if the Juſtices do delay to give Judgment, he may have an *Alias*, and afterwards a *Pluries* directed unto the ſame Juſtices, *vel cauſam nobis ſignificetis*; and if the Juſtices upon the Writ will not give Judgment according to the Writ, *Quære* whether the Plaintiff may have an Attachment againſt them, becauſe they are Juſtices of Record.

B But ſee in the Regiſter, among the Writs to remove Records, many Writs to proceed to Judgment, *&c.* of ſeveral Forms.

C And if the Chaplain of a Chauntry bring an Aſſiſe of *Novel Diſſeiſin* againſt another Chaplain for Lands, and the Defendant claimeth the ſame Chauntry by the King's Collation and prayeth in Aid of the King; now if the Defendant cannot ſhew Title in the Chancery for the King, he may have a *Procedendo*, directed unto the Juſtices of Aſſiſe, that they proceed unto the Taking of the Aſſiſe, notwithſtanding the Allegation made of the King's Collation; and he may ſue the like Writ where the Defendant doth pray in Aid of the King in Aſſiſe by the King's Grant, and have that granted, if he cannot ſhew Matter in the Chancery, which proves the King's Title, the Plaintiff ſhall have a *Procedendo*, that they proceed to take the Aſſiſe, notwithſtanding the Allegation made of the King's Grant.

D And there are divers Writs in the Regiſter directed unto Juſtices of Aſſiſe, that they do not proceed in the Aſſiſe againſt the Defendant *while he is in the Service of the Lord the King* in the War, but to continue them; but theſe Writs are made by Virtue of an Act of Parliament made for that Time, as it ſeemeth. But if the King certify by his Writ unto the Juſtices, that the Lands are in his Cuſtody, by Reaſon of Nonage of any Heir, or by an Inquiſition taken and returned in the Chancery, commanding that they do not proceed, the King not conſulted with; then it ſeemeth that the Juſtices ought to ſtay for the Time, although there is not any Office found nor returned; for they are bound to give Credit to the King's Certificate, although that it be not true, *&c.* And in Attaint for the Plaintiff, if he be in War in the King's Service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain Day, *&c.*

E And in Aſſiſe of *Novel Diſſ.* if the King ſend his Writ to the Juſtices, reciting that the Defendant holdeth the Land of the King by Gift by his Charter, for Life, commanding them that they do not proceed, the King not conſulted: Now although the Tenant will not plead the ſame, it ſeemeth, that by that Writ the Juſtices ought to ſtay their Proceeding. So if the King recite in the Writ, the Tenant is in his Service in War beyond the Seas, or in *Scotland*, and that he holdeth for Life by the King's Charter of the King's Gift, commanding them not to proceed, the King not conſulted, but to continue the Aſſiſe until a certain Day, there, it ſeemeth, they ſhall ſtay their Proceedings; for the Tenant cannot plead it, *&c.* For if the Eſcheator will ſay, that he hath ſeized the Lands into the King's Hands in an Aſſiſe brought by any Perſon, in that Caſe the Court ſhall ſurceaſe, *a fortiori* by the King's Certificate; and divers ſuch Writs are in the Regiſter, *&c.*

F In Aſſiſe of Lands and Tenements, the Defendant pleads two or three Records in Bar to divers Parcels of the Land which are in the Treaſury, and the Plaintiff denieth thoſe Records, the Defendant ought for to remove thoſe Records out of the Treaſury by a *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer. And if he ſue forth ſuch a *Certiorari* to the Treaſurer and Chamberlains, and they certify ſome of the Records in the Chancery to the King, and moreover certify, that there are other Rolls of the ſame Juſtices, of which they have not yet made full Search: Upon that Certificate made by the Treaſurer and Chamberlains in the Chancery, the King ſhall ſend his Writ unto the Juſtices, commanding them to continue that Aſſiſe, until the next Aſſiſes, that full Search may be made of thoſe Records, ſo that the Tenant loſe not his Lands for Failure of the Records; and ſuch Writ is in the Regiſter.

G And if a Man ſue an Aſſiſe before the Juſtices of Aſſiſe, and the Tenant plead Baſtardy in the Plaintiff, upon which a Writ is awarded to the Biſhop to certify at the next Aſſiſes; and before the next Aſſiſes the King maketh new Juſtices, and the antient Juſtices do certify the Record of Aſſiſe unto the Treaſury, the Plaintiff ought for to ſue a *Certiorari* to remove the Record out of the Treaſury into the Chancery by a Writ to the Treaſurer and Chamberlains, and upon that Record ſent into the Chancery, he ſhall have a Writ of *Mittimus* ſent unto the Juſtices reciting the Matter; and in the End of the Writ ſhall be this Clauſe:

That what is juſt may be done to the Parties aforeſaid in the ſaid Aſſiſe, we ſend
[155.] *to you the Record and Proceſs of the Plea aforeſaid under the Foot of our Seal, which for certain Reaſons we cauſed to be removed before us in our Chancery, commanding you, that having inſpected them, and alſo the Certificate of the ſaid Biſhop hereupon ſent before you, as it is ſaid, and having received of the Sheriff of the County aforeſaid the original Writ thereof, which remains in his Power, as appears to us by the Inſpection of the ſame Record and Proceſs, you proceed again in the ſame Aſſiſe, according to the Tenor of the Writ and Plea aforeſaid, and to do to the ſaid Parties that which of Right and according to the Law and Cuſtom of the Realm ought to be done; and we command the ſame Sheriff, that he deliver to you the ſaid Writ at your next Seſſion in the County aforeſaid. Witneſs*, &c.

And if a Man ſue an Aſſiſe before Juſtices againſt one Tenant, and in the A
ſame Aſſiſe he name the Mayor and Commonalty of any Town as Diſſeiſors, or Bailiffs of any Liberty as Diſſeiſors, unto the End that they may not have Conuſance of the Plea: Or that they ſhall not make the Panel; now he may ſue a ſpecial Writ in the Nature of an *Audita Querela* directed unto the Juſtices of Aſſiſe to enquire of the Matter, and to do Right unto the Parties, and if it be found, it ſhall abate the Aſſiſe. *Vide* Statute 9 *H.* 4. *cap.* 5. and ſee the like Statute made for the Sheriff, *Anno* 11 *H.* 6. *cap.* 2.

But the Sheriff or Bailiff ought to ſhew the Matter unto the Court and pray that it be enquired of, *&c.*

Writ de Quod ei deforceat.

THE Writ of *Quod ei deforceat* lieth, where Tenant in Tail, or Tenant B
in Dower or by the Curteſy, or for Term of Life, loſe their Lands by (*a*) Default in a *Præcipe quod reddat* brought againſt them; then they have not any other Remedy, if they were ſummoned according to the Law, *&c.* but this Writ of *Quod ei deforceat:* And this Writ is given by the Statute of *Weſtm.* 2. *cap.* 4. and the Writ is mentioned in the Statute; and the Form is ſuch:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *who was* C
the Wife of C. *one Meſſuage with the Appurtenances in* N. *which ſhe claims to be her reaſonable Dower*; or thus, *which ſhe claims to be of her reaſonable Dower, and that he the ſaid* A. *unjuſtly deforceth her, as ſhe ſays*, &c.

(*b*) And if the Tenant in Frankmarriage bring the Writ, then the Writ is, D

(*a*) And yet the Writ or Count do not ſuppoſe any Recovery, 18 *H.* 6. 25. on loſing by Default in a *Ceſſavit.* 8 *R.* 2. *Brief* 931.

(*b*) And it is good, without ſhewing of whoſe Gift in the Count. 29 *Ed.* 3. 47. 30 *Ed.* 3. 31. 6 *H.* 4. 2.

That juſtly, &c. *he render to* B. *one Meſſuage with the Appurtenances, which ſhe claims to be her Right and Marriage, and that he the ſaid* A. *unjuſtly deforceth her*, &c.

And if he be Tenant in Tail, then the Writ is,

That he render, &c. *which he claims to hold to him and his Heirs of his Body iſſuing, and the aforeſaid* A. *unjuſtly deforceth him.*

And for Tenant for Life the Writ is,

Which he claims to hold for the Term of his Life: Or for Tenant by Curteſy, *Which he claims to hold by the Law of* England.

And the Regiſter is, That this Writ for Tenant by the Curteſy is by Equity of the Statute. But if the Tenant in Tail, or ſuch other Tenant who hath a particular Eſtate, loſe by Default where he is not ſummoned, *&c.* then he may have a Writ of Diſceit, or a *Quod ei deforceat*, as he pleaſeth.

E (*a*) If a Man loſe by Default in an Action of Waſte ſued forth againſt him, he ſhall not have a *Quod ei deforceat* for the Verdict which found the Waſte.

And if a Man loſe any Land by Default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and then have a *Quod ei deforceat* upon that Record; and ſo he ſhall have the *Quod ei deforceat*, although he do not remove the Record; but then it ſeemeth, that the *Quod ei deforceat* ſhall be ſued in the Common Pleas or in the Court Baron where he loſeth the Land, as he pleaſeth; *tamen quære.* 2 H. 4. 2. Hankford, contra. 41 Ed. 3. 8. v. 44 Ed. 3. 42. 2 Ed. 4. 11. 10 Ed. 4. 21.

F (*b*) And the *Quod ei deforceat* lieth againſt a Stranger to the Recovery; if a Man recover by Default, and maketh a Feoffment, the *Quod ei deforceat* ſhall be brought againſt the Feoffee. 10 H. 4. 7. ac. 41 Ed. 3. 5.

And if a Woman loſe by Default, and taketh Huſband, ſhe and her Huſband ſhall have the *Quod ei deforceat:* But if Tenant in Tail loſeth by Default and dieth, his Heir ſhall not have the *Quod ei deforceat*, but a *Formedon*; for that is his Writ of Right. 46 Ed. 3. pl. 5. 41 Ed. 3. 30.

G Where a Woman hath Dower aſſigned her in the Chancery for the Nonage of the Heir, who is in Ward to the King; and afterwards the Heir at full Age ſueth a *Scire facias* in the Chancery againſt the Wife to avoid that Endowment, and recovereth in that *Scire facias* by Default of the Wife: Now the Wife ſhall have a *Quod ei deforceat* in the Common Pleas upon that Recovery. 41 Ed. 3. 30.

And ſo if a Man recover in the King's Bench any Land by Default, upon a *Scire facias* ſued out of any Record which is there, the Tenant who loſt by Default ſhall have his *Quod ei deforceat*, and ſhall ſue the ſame in the Common Pleas. 41 Ed. 3. 30.

(*a*) So in Waſte. 3 *H.* 6. 29. *per Rolf contra. Co. Lit.* 355. *b.* 1 *And.* 271. 3 *Cro.* 263. [See 44 *Ed.* 3. 42. 2 *H.* 4. 21. 21 *H.* 6. 56.]

Note; On a Recovery by Default in a Court Baron, a *Quod ei deforceat* lies in the King's Court, and therefore it is no Iſſue to ſay *Nul tiel Record ne Recovery*, for that it appears the Tenements were loſt by Default. 2 *Ed.* 4. 11. 10 *Ed.* 4. 2. 10 *H.* 7. 9. 6 *H.* 4. 3.

(*b*) See 44 *Ed.* 3. 43. accordant, but it is doubted, 11 *Ed.* 3. and 16 *Ed.* 3. For by *Pulton*, if the Feoffor recovers in a Writ of Right, the Feoffee cannot tender Suit and *deraigne*, *&c.*

46 Ed. 3. 21. H If two Coparceners Tenants in Tail loſe their Land by Default, they ſhall join in a *Quod ei deforceat*, and yet the Default of the one is not the Default of the other. *M.* 46 *Ed.* 3.

I And in a *Præcipe quod reddat*, if the Tenant for Life or in Tail appear, and after depart in Deſpite of the Court, he ſhall loſe his Land, and yet he ſhall have a *Quod ei deforceat*, for that Recovery is by his Default, becauſe he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for Life, after the Miſe joined in a Writ of Right depart in Deſpite of the Court, he loſeth his Land, and there he ſhall not have a *Quod ei deforceat*, becauſe Judgment final ſhall be given againſt him in that Caſe.

[156.] A (*a*) If the Huſband and Wife be ſeiſed of Land in the Right of the Wife, Old N.B. 155. contr. 10 Ed. 4. 2. contra. for the Life of the Wife, and they loſe the Land in a *Præcipe quod reddat* by Default, yet they ſhall have a *Quod ei deforceat*, &c.

And if Tenant for Life loſeth his Land in a *Ceſſ.* brought againſt him by Default, yet he ſhall have a *Quod ei deforceat* by the Statute of *Weſt.* 2. *H.* 5 *Ed.* 3. & *M.* 9 *Ed.* 3.

B And if Tenant by Receipt upon the Default of Tenant for Life appeareth, and is received, and pleadeth, and afterwards loſeth by (*b*) Action tried: Yet the Tenant for Life ſhall have a *Quod ei deforceat*, for the Judgment is given againſt him by his Default.

And if the Tenant vouch, and the Vouchee will not appear, for which the Tenant loſeth by Default of the Vouchee, it is to ſee whether the Tenant ſhall have a *Quod ei deforceat*; for he loſeth the Land by the Default, although it be not his own Default, for the Statute is, *Et cum temporibus retroactis cum aliquis amiſiſſet terram ſuam per defaltam, non habeat aliud recuperare quam per breve de recto:* And there it doth not ſay, *per defaltam ſuam*, but only by Default. But after in the Statute, it ſaith, *Proviſum ſit, quod de cætero non ſit eorum defalta eis ita præjudicialis*, &c. And by that it ſeemeth that the Tenant ought to make Default. But it ſeemeth that the Default of the Vouchee, is the Default of the Tenant, and ſo Default in both: *Quære* of that. But if the Tenant vouch, and the Vouchee appeareth and entreth into the Warranty, and afterwards loſeth by Default; now if the Tenant loſe by the Default of the Vouchee, he ſhall not have a *Quod ei deforceat*, becauſe he ſhall have Judgment to recover over in Value againſt the Vouchee, by the Default of the Vouchee, ſo as he ſhall have Recompence. But if the Vouchee doth not appear, but maketh Default, then he ſhall loſe the Land by the Default of the 11 Ed. 4. 11. Vouchee; but that is not the Default of the Tenant, and therefore *Quære* of that Caſe.

C And if the Huſband and Wife loſe by Default the Land of the Wife, which ſhe holdeth for Term of Life, if the Huſband dieth, ſhe ſhall not have a *Quod ei deforceat*, but a *Cui in vita*, for it is a Demiſe made by the Huſband: And when he bringeth the *Quod ei deforceat*, he counteth that he was ſeiſed of

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(*a*) 4 *Ed.* 3. *pl.* 5. *contra.* 5 *Ed.* 3. *pl.* 16. 26. 8 *R.* 2. *Brief* 931.

(*b*) See 33 *Ed.* 3. *Quod ei deforceat* 17. 8 *H.* 4. 5. 33 *Ed.* 3. *Avowry* 255. 10 *H.* 7. 14 or 29. *Nat. B.* 154.

the Land in his Demeſne, as of Freehold, or in his Demeſne in Tail, without ſhewing of whoſe Leaſe or Gift he was ſeiſed; and he ought to alledge Eſplees in himſelf, *&c.* and then the Defendant ought to deny the Right of the Demandant, *&c.* and ſhew, how that another Time he recovered the Land againſt the Demandant by Formedon or other Action, and ſhall ſay in the End of his Plea, *That he is ready to maintain his Right and Title aforeſaid by the Gift aforeſaid*, &c. *wherefore he prays Judgment*, &c. And then the Demandant in the *Quod ei deforceat* ſhall traverſe that Title, or may ſhew Matter to bar that Title, *&c.* but he ſhall not make Defence, and then plead in Bar, as he ſhall do in the Formedon, *&c.*

S. 48 Ed 3. 8. acc. 2 Ed. 4. 13, 11, acc. The Tenant in the Quod ei deforceat may plead any Bar as in other Actions, and then the Demandant cannot vouch by the Statute of Weſt. 2. cap. 4. But if he make his Bar by the firſt Recovery, then he may. 33 H. 6. 46. quod nota.

Writ de Attornato faciendo vel recipiendo.

D THE Writ *de Attornato faciendo* or *recipiendo* lieth, where a Man ought to do Suit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the ſame Court, *&c.* And if he be in Doubt whether the Sheriff will admit ſuch a Man for his Attorney which he maketh; then he who would make ſuch Attorney may ſue that Writ directed unto the Sheriff or Bailiff of the Hundred, commanding them to receive ſuch a Man to be Attorney for him to appear, *&c.* and the Writ is ſuch:

Vide ant. 25.

The King to the Sheriff, &c. *Becauſe it is provided by the Common Council of our Realm, that every free Man who owes Suit at the County, Tithing, Hundred, Wapentake, may freely make his Attorney to do his Suit for him; We command you, that the Attorney whom* S. *ſhall make in his ſtead to do Suit for him at your County aforeſaid, your Tithing of* A. *and* B. *Hundred of* C. *and* D. *your Wapentake of* E. *and* F. *you receive in the Place of the ſaid* S. *for this Purpoſe without Difficulty. Witneſs*, &c.

Otherwiſe unto the Bailiff of a Hundred, thus:

The King to his Bailiffs of the Hundred of ſeven Hundreds of Cobham *and* Bray, *greeting: Becauſe it is provided by the Common Council of our Realm*, &c. *who owes Suit to the Hundred may freely*, &c. *We command you, that the Attorney*, &c. *at the aforeſaid Hundred of ſeven Hundreds of* Cobham *and* Bray, *you receive in his ſtead*, &c.

Otherwiſe unto the Bailiffs of another Lord:

The King to the Bailiffs of A. *of* I. *greeting: Whereas by the Common Council*, &c. *who owes Suit to the Court of the ſaid Lord may*, &c. *We command you*, &c. *at the Court of your ſaid Lord of* I. *you receive in the Place of him the ſaid* S. *for this Purpoſe without Difficulty. Witneſs*, &c.

And by that it appeareth, that the Tenant may make Attorney by his Letters Patent to do Suit at the Court of his Lord. And if the Tenant by his Letters Patent under his Seal make Attorney for him to do Suit for him at the L. Court, or at the Hundred, and the Bailiffs will not admit of him, *&c.* then he ſhall have a Writ unto them in this Form:

The King to the Bailiffs of the Dean and Chapter of the Church of the bleſſed Mary *of* Lincoln *of* C. *or of the Hundred of* S. *greeting: Becauſe*, &c. (as before, until) *We command you, that the Attorney whom* S. *ſhall make to be his Attorney by his Letters Patent in his Place to do Suit for him at the Court of the ſaid Dean and Chapter of* C. *or at the Hundred of the ſaid Dean and Chapter of* C. *you receive in the Place of him the ſaid* S. *for this Purpoſe without Difficulty, for this Time, of our eſpecial Favour*, &c.

And for the Guardian there is another Writ, thus:

The King, &c. *We command you, that the Attorney whom* S. *Guardian of the Land and Heir of* R. *will make to be his Attorney in his Place to do Suit for him in the Name of the ſaid Heir*, &c. *you receive in the Place of him the ſaid Guardian for this Purpoſe without Difficulty*, &c.

Or thus to the Bailiffs of the King:

[157.] *The King to his Bailiffs of the Honour of* Peverel *in the County of* N. *greeting: Becauſe*, &c. *We command you, that the Attorney whom* S. *ſhall make in his Place to do Suit for him at our Court of the Honour aforeſaid in the County aforeſaid, you receive in the Place of him the ſaid* S. *&c.*

And if the Lord of any Tenant be in Ward to the King for the Nonage of A
his Heir, becauſe he holdeth other Lands of him *in Capite, &c.* and his other Lords will diſtrain for Suit during the Time the Lands are in the King's Hand or in the Hands of his Committees, then the King or his Committees ſhall have a ſpecial Writ unto the Bailiffs of the other Lords, that they do not diſtrain the Heir, nor in the Lands, *&c.* during the Time that he is in the King's Hands, or in the Hands of his Committee; and if he have diſtrained them, that they deliver back the Diſtreſs again; and that Writ appeareth in the Regiſter.

And if the King hath any Lands or Tenements in Ward during the Nonage of an Infant, and the King in Chancery aſſigns Dower unto the Wife of the Huſband who was Father to the Ward, of Lands holden of other Lordſhips; now if the other Lords will diſtrain the Tenant in Dower for Suit at their Court during the Time the Lands are in the King's Hands, the Wife ſhall have a Writ unto the Bailiffs of the other Lords, commanding them that they do not diſtrain her. And recite in the Writ all the ſpecial Matter; and if they have taken any Diſtreſs, that they deliver it back again.

If a Man make an Attorney to do Suit for him at the County or Hundred or other Court, and the Bailiffs will not admit him for his Attorney; or if the Bailiffs do admit him for Attorney, and afterwards diſcharge him after the Year; ſuppoſing that he ought not to continue Attorney for the Party above one Year; or for any other unreaſonable Cauſe they diſcharge him to be Attorney for the Party; then the Party may have a ſpecial Writ directed unto the Bailiffs, *&c.* commanding them that they receive him for his Attorney; and thereupon he may have an *Alias* and a *Pluries* and an Attachment againſt them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return Cauſe upon the *Pluries*, which ſhall be allowable, wherefore they do not admit him; and the Form of the Writ is ſuch:

The King to the Bailiffs of A. *of the Hundred of* B. *greeting: It is ſhewed unto us on the Behalf of* C. *that whereas by our Writ he made his Attorney to do Suit for him at the aforeſaid Hundred of your Lord of* B. *in the ſame Hundred before you, and the ſame Attorney by the ſame Writ being admitted for this Purpoſe, hath hitherto done that Suit, as the Cuſtom is in our Realm, you of your own Preſumption voluntarily inſinuating, and pretending Cauſe that the Power of ſuch Attorney ought not to continue above one Year, do not permit him the the ſaid* C. *to do his Suit by his Attorney aforeſaid, to the great Damage and Grievance of him the ſaid* C. *at which we very much wonder and are moved: And becauſe the Virtue of our Writs for making ſuch Attorneys is not limited, neither is the Term limited to the Perſons who are required for this Purpoſe; We being willing to apply a Remedy hereupon, that the ſaid* C. *or others may not be unduly vexed or aggrieved by the Cauſe aforeſaid, command you, firmly enjoining that for the future deſiſting from bringing ſuch voluntary and undue Vexations and Grievances to the ſaid* C. *or to others for the ſaid Cauſe, you permit him the ſaid* C. *to do his Suit aforeſaid, by his ſaid Attorney without any Difficulty whatſoever, according to the Tenor of our former Writ to you thereupon directed. And ſo behave yourſelves in this Matter, that the aforeſaid* C. *by the Cauſe aforeſaid be not put in Default, nor be loſing in any Thing, and that we may be no more ſolicited hereupon, whereby we ought to put our Hand to this in another Manner. Witneſs,* &c.

C *Note*, That the Party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive ſuch Perſon for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff, to receive any ſuch Perſon for his Attorney, that he will preſent unto the ſaid Bailiffs or Sheriffs to be his Attorney to do his Suit; or he may make Attorney by Letters Patent directed unto the Bailiffs without ſuing forth any ſuch Writ.

And if a Man ſue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his Suit for him, and the Bailiffs refuſe to admit him; now the Party who ſued forth the Writ ſhall have an Attachment againſt the Bailiffs for that Refuſal, without ſuing forth an *Alias* or a *Pluries* directed unto them.

And ſo the ſame Law is, if the Tenant by his Letters Patent maketh one Attorney to do his Suit for him, and the Sheriff or Bailiff of the Court doth refuſe to admit him for his Attorney: Upon that Refuſal, the Party ſhall have an Attrchment againſt the Bailiff, *&c.* although he hath not ſued forth any Writ directed to him before, becauſe they do againſt the Statute, which requireth, that they admit him for Attorney whom the Tenant will make to be his Attorney.

D And he ſhall have the like Writ againſt the Bailiffs of any other Lord, who refuſe to admit an Attorney to do Suit for the Tenant in any Court-Baron, and that Writ appeareth in the Regiſter.

[158.] *Writ* pro Exoneratione Sectæ ad Curiam Com' vel Baron.

A THIS Writ lieth where the Tenant holdeth his Land to do Suit at the County-Court, Hundred, or other Court-Baron, or Wapentake or Leet, and he who ought to do the Suit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by ſuch Service, will diſtrain him to do his Suit at his Court during the Time he is in Ward unto the King or his Committee; his Guardian ſhall ſue this Writ unto the Sheriff, or Bailiffs of the Court, that they do not diſtrain him, *&c.* to do Suit during the Term he is in Ward to the King or his Committee; and the Form of the Writ is ſuch:

To the Bailiffs of A. *of* I. *greeting: Whereas according to the Law,* &c. *we ought not to do Suit at the Court of any Perſon by reaſon of any Lands and Tenements whatſoever being in our Hand or in our Ward, and thoſe Perſons to whom we have committed ſuch Wardſhip ought to hold thoſe Wardſhips during the Cuſtody as freely and quietly from all Suit, as if we kept them in our own Hand; We command you, that by reaſon of the Lands and Tenements of* I. *deceaſed, which he held of us in Chief, and which are in the Cuſtody of him the ſaid* R. *of our Grant, you do not diſtrain or cauſe him to be diſtrained to do Suit at the ſaid Court of your Lord of* I. *during the Cuſtody aforeſaid, and the Diſtreſs, if any,* &c.

B And the like Writ ſhall be for Tenant in Dower, where ſhe is endowed in the Chancery of Lands which are in Ward to the King, which Lands are holden of other Lords; now if the other Lords will diſtrain the Tenant in Dower to do Suit for thoſe Lands which ſhe holdeth in Dower, ſhe ſhall have a Writ to diſcharge her, which is ſuch:

The King to the Bailiffs of A. *of* B. *greeting: Whereas according to the Law,* &c. (as above, until) *or in our Ward, and Women holding Lands or Tenements in Dower of ſuch Wardſhips ought to hold them as freely and quit from all Suit during thoſe Wardſhips, as if we kept the ſaid Lands and Tenements in our own Hand; We command you, that you do not diſtrain* M. *and* R. *his Wife, by reaſon of the Lands and Tenements which were* H.'s *in* F. *which he held of us in Chief, and which the ſaid* R. *and* M. *hold in Dower of him the ſaid* R. *of the Gift of the aforeſaid* H. *her former Huſband, and of the Inheritance of the Son and Heir of* A. *within Age being in our Wardſhip, to do Suit at the Court aforeſaid of your Lord, during our Wardſhip aboveſaid, and the Diſtreſs,* &c.

And if the Heir be in Ward of the King and alſo his Lands, and afterwards the Tenants-Paravail who hold of the Heir are diſtrained by other Lords, of whom the Heir holds his Lands, to do Suit unto the Lord's Court, thoſe Tenants ſhall have a Writ directed unto the Lord's Bailiff to diſcharge them of the Suit; and the Writ is ſuch:

The King to the Sheriff of Nottinghamſhire, *greeting: Whereas according to the Law and Cuſtom of our Realm no Perſon who holds of Heirs being within Age and in our Cuſtody, is bound to do Suit at the County, Hundred, Wapentake, or other Court, for Lands and Tenements of thoſe Heirs being in our Hand, during the Cuſtody aforeſaid; We command you, that you diſtrain not or cauſe to be diſtrained the Tenants of the Abby of* Derley *of certain Lands and Tenements of* Roger, *the Son and Heir of* Roger Bellers *deceaſed, in* Chilwell, *(which he held in Chief of Lord* Richard *lately King of* England, *becauſe the Lands and Tenements of the ſame Heir in the ſaid Town are in our Hand by reaſon of his Minority) to do Suit at the Wapentake of* B. *during the Cuſtody aforeſaid.*

C And if the Heir and his Lands be in the King's Ward, for Lands holden of the King *in Capite*, and afterwards the other Lords, of whom the Heir holdeth Parcel of his Lands, will diſtrain for any Service or Rent to them due, then the King or his Committee may ſue a Writ for them to ſurceaſe from ſuch Diſtreſs; and the Writ is ſuch:

The King to the Bailiffs, &c. *Whereas Heirs being within Age and in our Ward* (*a*) *ought not, nor are bound to do any Services during thoſe Wardſhips, according to the Law and Cuſtom of our Realm*; *We command you, that the Diſtreſs which is made by the Abbot of* W. *upon the Tenant of the Heir of* William *of* W. *(who held of us in Chief) being within Age and in our Cuſtody, for Homage, Fealty and other Services to be done by the ſaid Heir to the ſaid Lord, you do wholly ſuperſede during the Cuſtody aforeſaid, and the Diſtreſs, if any*, &c.

And alſo the Tenant in Dower ſhall have ſuch Writ, if the Bailiff of other Lords will diſtrain her, for the Relief of the Heir, or other Services, during the Time that the Heir's Lands are in the King's Cuſtody, or in the Cuſtody of his Committee. And it ſeemeth, that he may ſue this Writ directed unto the Lord himſelf, as well as to the Bailiffs, or unto them both.

D *Note*, That if a Man holdeth of another to do Suit to his Mill, *&c.* if he do not the Suit, he ſhall have a *Secta ad Molendinum* againſt him, and by the ſame Reaſon, if a Man hold of another Lord to do Suit at his Court in the Manor of *D.* if he do not the Suit, the Lord may have a Writ of *Secta ad Curiam ſuam faciend'* as well as the other Writ. But yet there is no ſuch Writ in the Regiſter, becauſe he may diſtrain (*b*) for that Suit, and ſhall not have any other Profit, but only Appearance in his Court. But in the other Caſe [159] *de Secta ad Molendinum*, he ſhall have other Profits by the Suit, the Toll of the Grain he ſhall grind there, and for that Profit it ſeemeth the Action of *Secta ad Molendinum* was given, and for the Suit of the Court but only a Diſtreſs; *tamen quære.*

A If the King have Lands by Forfeiture or Eſcheat, and leaſeth them for Life, at Will, or in Tail, and if the Lord of (*c*) whom the Lands are holden will diſtrain the King's Committee or Leſſee for Suit or other Services, he ſhall have a ſpecial Writ unto the Lord's Bailiff to ſurceaſe, *&c.*

V. 31 H. 8. 25.
33 H. 6. 7.
Stamf. 38. H.
3 Ed. 3. 10.
45 Ed. 3. 6.

And if Lands deſcend unto divers Coparceners, for which one Suit ſhall be done at the Lord's Court, if Parcel of thoſe Lands come into the King's Hands, then he ſhall have a ſpecial Writ to diſcharge him of the Suit (*d*) for the Time they ſhall be in the King's Hands; which ſhall be ſuch:

(*a*) *Note*, All the Services are gone during the King's Seiſin; for the meſne Seigniories are ſuſpended by the King's Seiſin, who is Lord Paramount, *Bract. lib.* 1. *fol.* 87. but it ſeems that the Rent (remains) although the Diſtreſs be ſuſpended; but the Lords muſt ſue to the King by Petition, for the Surpluſage above that which they are charged to the King, to be recovered. 24 *Ed.* 3. 24. 39 *Aſſ.* 5. 13 *H.* 7. 15. *per Keb.* Where he may diſtrain at full Age of the Infant, and after Livery ſued, for all the Arrears, above that for which they were charged to the King. See *Stamf. Prærog.* 9. 39 *Ed.* 3. *Relief* 1. 26 *H.* 8. 8.

(*b*) See 6 *H.* 3. *Voucher* 273. *Secta ad Hundredum* brought, *quæ facere Debet & Solet.*

(*c*) And *Note*; If the King has a Tenancy by Forfeiture or Purchaſe, if he does by Covin alien them to hold of himſelf, the Lord may ſue by Petition, and have a *Scire facias* againſt the Patentee to repeal the Patent, and to reſeiſe the Land, and then it ſhall be granted, *Tenend' de Capitali Domino*, 20 *Aſſ.* 124. 46 *Ed.* 3. *Petition* 19. 17 *Ed.* 3. 59. but this is intended of an Alienation in Fee. 3 *Ed.* 3. 10.

(*d*) *Quære*, If *A.* holds Lands charged with Suit to the Hundred by Preſcription, and enfeoffs the King of Parcel, if all the Suit is gone.

The King to the Sheriff, &c. *greeting: Whereas it is provided by the Common Council of our Realm, that if any Inheritance from which only one Suit is due to ſeveral Heirs*, &c. *or devolves to others by Sale*, &c. *then only one*, &c. *hath been accuſtomed to be done, and a certain Inheritance (which was* H.*'s of* B. *of the Barony of* B. *from which ſaid Barony only one Suit is due to your ſaid Court) is devolved by Sale, as we underſtand, to our beloved and faithful* W. *of* H. *and* I. *Son and Heir of* R. *of* S. *being within Age and in the Cuſtody of our beloved and faithful* R. *of* N. *by our Commiſſion. And we, according to the Law and Cuſtom*, &c. *ought not to do any Suit by reaſon of Lands and Tenements being in our Hand and in our Ward, and thoſe to whom we have committed ſuch Wardſhips ought to hold them as freely, and quit from all Suit, as if we kept the ſame in our own Hand; We command you, if it be ſo, that then you do not diſtrain the ſaid* W. *of* H. *to do Suit at your County aforeſaid for the Lands and Tenements of the ſaid Barony during the Wardſhip of the ſaid Heir abovementioned*, &c.

And if the Wife be Tenant in Dower of any Land, ſhe ſhall not be diſtrained to do Suit for that Land which ſhe holdeth in Dower, if the Heir have ſufficient Land in the ſame County to be diſtrained for the ſame. And if ſhe be diſtrained, then ſhe ſhall have ſuch Writ:

The King to the Bailiff of the Hundred of N. *greeting*, &c. *Whereas according* B *to the Law and Cuſtom of our Realm Women, Tenants in Dower, ought not to do Suit at the Hundred or the Court of any Perſon for their Lands and Tenements which they hold in Dower; We command you, that you do not diſtrain* A. *who was the Wife of* B. *to do Suit at the Hundred aforeſaid for the Lands and Tenements which ſhe holds in Dower, and the free Tenement which was her ſaid former Huſband's, contrary to the Law and Cuſtom of our Realm, ſo long as the Heir of the aforeſaid* B. *hath other Lands and Tenements in your Bailiwick, whereby he may be diſtrained to do the Suit for the Dower aforeſaid, and the Diſtreſs, if any, ſhall be made*, &c. *that you cauſe it to be delivered without Delay*, &c.

Plowd. Com. 240. acc.
45 Ed. 3. 23.
Dyer 240. b.
St. Marl. c. 9.

And if Lands deſcend to many Coparceners, whereof one Suit ought to be C done for the whole Land; now if the Land be holden of the King, then all the Coparceners ought to do the Suit as well after Partition as before: But if the Land be holden of another Lord, then that Coparcener or his Feoffee, who hath the Part of the eldeſt Siſter, ſhall only do the Suit; and if the Lord will diſtrain the other Coparceners, then they ſhall have a Writ againſt him, directed to him or his Bailiffs, to diſcharge them of that Suit, and Diſtreſs taken, *&c.* and the Writ ſhall be ſuch:

The King to C. *or to the Bailiffs of* C. *greeting*, &c. *Whereas by the Common Council*, &c. *it is provided, that if any Inheritance, from whence one Suit only is owed, devolves to ſeveral Heirs, Coparceners of the ſame Inheritance, or otherwiſe by Sale or other Manner, only one Suit is to be done for that Inheritance, as before hath been accuſtomed to be done, and a certain Inheritance which was* A.*'s in* N. *(for which one Suit only was due to your Court of* I. *or to the Court aforeſaid of your Lord of* I.*) is devolved to* A. B. *and* C. *Coheirs and Parceners of the Inheritance aforeſaid, as we have received Information: We command you (or ye) that you (or ye) do not diſtrain the aforeſaid* A. B. *and* C. *ſeverally to do divers Suits for their Portions of the ſaid Inheritance at your Court of* I. *or at the Court aforeſaid of your Lord of* I. *contrary to the Form of the Proviſion aforeſaid, and the Diſtreſs, if any*, &c.

D And if the Tenant infeoff divers Perſons of Lands, for which one Suit ought to be done, if one of the Feoffees do the Suit, *&c.* if the other Feoffees are diſtrained to do Suit for that Land, they ſhall have ſuch Writ, which Writ is in the Regiſter, and that Writ is given by the Statute of *Marlebridge*, *cap.* 9. (*a*). Perk. 130. Poſt. 162. D.

And ſo if the Heirs or Feoffees ſhall do the Suit at the County, Hundred or Wapentake; if one do the Suit, all of them are diſcharged; and if they be diſtrained, they ſhall have that Writ. 24 Ed. 3. 34. Poſt. ibid.

And ſo if one Coparcener maketh a Feoffment of his Part, or a Man be Tenant by the Curteſy of one Part of the Land, (*b*) yet one Suit ſhall be only done by one Coparcener, by him who hath the eldeſt Part. And if they be joint Feoffees, then by one of them, as they can agree amongſt themſelves, *&c.* And if he ſue ſuch Writ, and he be diſtrained, then he ſhall have an Attachment againſt the Lord, or the Bailiffs to whom the firſt was directed, to anſwer that Contempt, in which Writ he ſhall recover his Damages, *&c.*

E But if there be two Coparceners of Land, for which one Suit ought to be done, and the eldeſt Siſter will not do the Suit at the Lord's Court; then the Lord may diſtrain the other (*c*) Coparcener, as well as the eldeſt Coparcener, for that Suit, and if the Coparceners be diſtrained, then they ſhall have a Writ againſt the eldeſt Siſter to compel her to do the Suit; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *If* B. *and* C. *ſhall make you ſecure*, &c. *then ſummon*, &c. A. *that ſhe be*, &c. *to ſhew wherefore, whereas by the Common Council*, &c. *that if any Inheritance*, &c. (as above, until) *hath been accuſtomed to be done, and that ſhe who hath the principal Part*, &c. *and a certain Inheritance*, &c. (as above, until) *is devolved to* A. B. *and* C. *Coheirs and Parceners of the Inheritance aforeſaid, as we have received Information, and the aforeſaid* A. *hath Part of that Inheritance; and the aforeſaid* B. *and* C. *are ready to contribute to do the Suit for their Portions, ſhe the ſaid* A. *refuſes to do that Suit for herſelf and the ſaid* B. *and* C. *at the Court aforeſaid, to the great Damage of them the ſaid* B. *and* C. *and againſt the Form of the Proviſion aforeſaid, as it is ſaid: And have there the Summoners*, &c. [160.]

A (*d*) And if a Man have Lands in divers Places in the County, and hath ſeveral Leets, *&c.* or Hundreds, and he is conſtrained to come unto the Leet 18 H. 6. 13. Marl. c. 10.

or

(*a*) See *Regiſter* 176. accordant. 11 *Ed.* 3. *Avowry* 10. by *Stone* and *Thirn. contr. Parn.* For Suit to the Hundred is not only in Reſpect of the Reſiance, as Suit to a Leet, *&c.* is. Note *Regiſter* 175. *cum ſecundum legem & conſuetud'*, *&c.* and *ibid.* 176. *cum de communi concilio Regni*, *&c.*

(*b*) See accordant 24 *Ed.* 3. 73. yet *contra* of Jointenants. *Poſt.* 162. D. See 2 *Ed.* 2. *Avowry* 179. If Lands deſcend to two Parceners, and the Elder does Homage, this diſcharges both; and yet if the Elder alien, the Lord may diſtrain on the Younger for the Homage.

(*c*) And ſhall make Avowry on her only, and not on both after a Partition by Feoffment, *&c.* 24 *Ed.* 3. 73. See 2 *Ed.* 2. *Avowry* 184. and ſee the Caſe, 24 *Ed.* 3. 34, 73. where the Eldeſt aliens her Part to one, and the Younger her Part to another, and the Avowry made on the Alienee of the Elder only for Suit, *&c.* and ſo it may be on the Alienee of the Younger for other Suit; yet Suit made by one diſcharges both: And note *per Cur.* he cannot avow on both in Fee after ſuch Severance.

(*d*) *Note*; A Thing preſentable in the Leet, ſhall not be redreſſed in the Torn, without a ſpecial Preſcription, becauſe they are equal Juriſdictions, though at firſt the whole Juriſdiction

was

or the Sheriff's Torn, where he is not dwelling or converſant, but is dwelling within the Precinct of any other Leet or Hundred, *&c.* then he ſhall have a Writ unto the Sheriff for diſcharging him from coming to the Sheriff's Torn, or Hundred, or Leet, or other Place, than in the Leet or Precinct of the Hundred where he dwelleth; and the Writ is ſuch:

The King to the Sheriff of Worceſterſhire, *greeting: Whereas it is provided by the Common Council of our Realm, that they who have Tenements in divers Hundreds have no Neceſſity to come to the Sheriff's Torn, except in the Bailiwick wherein they ſhall be dwelling; We command you, that you diſtrain not* S. *to come to your Torn in our Hundred of* I. *contrary to the Form of the Proviſion aforeſaid*, &c.

And look the Statute of *Marlebridge*, *cap.* 10. by which it appeareth, that the Sheriff ought for to hold his Torn as he hath uſed in the Time of *Richard* the Firſt, and *John*, Kings of *England.*

And by the Writs it ſeemeth, That he ſhall hold his Torns in every Hundred, *&c.* And if the Sheriff diſtrain againſt that Statute any Man, then he may ſue that Writ upon the Statute, *&c.* and if he do diſtrain him after; then he ſhall have Attachment againſt the Sheriff, *&c.* and the Writ is ſuch:

The King to his Coroners in the County of Lincoln, *greeting: If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *our Sheriff of the County aforeſaid, that he be*, &c. *to ſhew wherefore, whereas by the Common Council*, &c. (as above, until) *dwelling*, *he the ſaid* B. *or he the ſaid Sheriff hath diſtrained the aforeſaid* A. *to come to the Torn of him the ſaid Sheriff of our Hundred of* I. *contrary to the Form of the Proviſion aforeſaid, and againſt the Form of our Mandate to him, before, thereupon directed, as it is ſaid: And have*, &c. *And in the mean time cauſe to be delivered the Beaſts of him the ſaid* A. *taken on that Occaſion. Witneſs*, &c.

And if a Man have Lands within the Precinct of ſeveral Leets, or in one County, and he dwelleth within the Precinct of one of them, and he is diſtrained to come unto another Leet (*a*) where he dwelleth not, then he ſhall have ſuch Writ unto the Sheriff, or Bailiffs of the Court, *&c.* that they do not diſtrain him to come to that Leet, within the Precinct whereof he dwelleth not; and the Writ is ſuch: B

The King to his Bailiffs of the Honour of C. *in the County of* Lincoln; or, *To the Bailiff of* A. *of* B. *in the County of*, &c. *greeting: Whereas by the Common*

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was in the Torn; and is ſuperior ſtill, where the Lord of the Leet is peccant, 21 *Ed.* 3. 314. or where the Lord of the Leet does not remedy an Abuſe, 20 *Ed.* 3. 85. 29 *Ed.* 3. 21. or in the Eyre, or by Commiſſion; *contra* 41 *Ed.* 3. *per Belkn.* 10 *H.* 4. 4. an Enquiry in a *Quo Warranto*; *viz.* He who claimed a Leet within a Town, whether four Men and the Bailiff were reſiant to the Leet or the Torn, or the Hundred where the Town is. See 18 *H.* 6. 12, 13. The Inhabitants of a Leet ſhall be compelled to come to a Torn. But *per Cur.* one ſhall not be compelled to come to two Leets, although one be greater and the other leſs; for *per Cur.* the Sheriff's Torn is no Leet; for Aſſize of Bread and Beer ſhall be preſented in a Leet, but not in a Torn; and thoſe Things which are omitted in a Leet, ſhall be preſented in the Torn; and ſee there that the ſame Land may be within the Precincts of two Leets; and agree that *A.* may have a Leet at one Time of the Year, and *B.* at another Time of the Year, for both make but one Leet.

(*a*) Lands may be held by Suit to a Hundred by Preſcription or ſpecial Grant, and he may be diſtrained, and alſo amerced for it, as it ſeems. And *Note*; if Land held by Suit at the Hundred, come to ſeveral Hands, ſeveral Suits ſhall be made, for it is not within the Statute, *per Parning*, which *Stone* denied: Alſo by *Parning*; If both Parcels return again to one Hand; yet two Suits are due, and he ſhall ſerve twice and be amerced twice. But *Shard* held the contrary. 11 *Ed.* 3. *Avowry* 101.

Council, &c. *that they who have Lands in divers Hundreds have no Neceſſity to come to the View of Frank-pledge, except in the Bailiwick where they ſhall be dwelling*; *We command you, that you diſtrain not* A. *to come to the View of Frank-pledge in your Court, or in the Court of your Lord of the Honour aforeſaid in the County aforeſaid, againſt the Form*, &c. *and the Diſtreſs, if any*, &c.

And it appeareth that if the Party be diſtrained, after that he hath ſued the Writ directed unto the Sheriff, or Bailiffs, that they not diſtrain him, that he ſhall have an Attachment againſt them: But it ſeems reaſonable, that firſt he have an Attachment againſt the Sheriff, or againſt the Bailiffs, who diſtrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, becauſe the Statute of *Marlebridge* is a Prohibition in itſelf, and he who doth contrary to the Statute doth Wrong unto the Party, upon which he may have an Attachment, without ſuing forth any Writ. Br. Leet 39. Britton 41.

C *Note*, That Men or Women who have entred into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other without great Cauſe; and if they be diſtrained for to come, they may have a Writ out of the Chancery to diſcharge them, which ſhall be ſuch:

The King to the Sheriff, &c. *Whereas by the Common Council*, &c. *that Men who have entred into Religion have no Neceſſity to come to the Sheriff's Torn*, &c. or thus, *to the View of Frank-pledge, unleſs their Preſence be required for ſome ſpecial Cauſe*; *We command you, that you diſtrain not the Abbot of* I. *to come to your Torn*; or thus, *to the View of Frank-pledge in your Hundred of* F. *againſt the Form of the Proviſion aforeſaid, and the Diſtreſs*, &c.

And the Abbot ſhall have ſuch a Writ unto the Bailiffs of another Lord, that they do not diſtrain him to come to his Leet.

And by the Common Law, Parſons of Churches ſhall not be compelled or diſtrained to come to the King's Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be diſtrained ſo to do, they ſhall have ſuch Writ:

The King to the Sheriff, &c. *Whereas according to the Cuſtom of our Realm Parſons of Churches, by reaſon of their Lands and Tenements annexed to their Churches, ought not to come to the View of Frank-pledge in our Court, or the Courts of any other Perſons whomſoever*; *We command you, that you diſtrain not* C. *Parſon of the Church of* I. *by reaſon of his Lands and Tenements annexed to the Church aforeſaid, to come to the View of Frank-pledge in the Hundred of* N. *contrary to the Cuſtom aforeſaid, and the Diſtreſs*, &c.

And Clerks who are not Parſons, nor have Benefices, ſhall not be diſtrained or compelled to come to Torns or Leets, but they ſhall have a Writ to diſcharge them, thus:

The King to the Sheriff, &c. *Whereas Eccleſiaſtical Perſons have no Neceſſity to come to the Torn of the Sheriff or to the View of Frank-pledge (unleſs their Preſence be required for ſome ſpecial Cauſe) according to the Form of the Proviſion made by the Common Council of our Realm for Men of Religion in the like Caſe*; *Therefore we command you, that you diſtrain not* S. *Parſon of the Church of* N. or *Chaplain, to come to your Torn or to the View of Frank-pledge of us in the Hundred of* I. *contrary to the Form of the Proviſion aforeſaid, and the Diſtreſs, if any*, &c. [161.]

And

Br. Leet 34.

A And Women are not compellable nor diſtrainable to come to the Sheriff's Torn, nor to Leets; and if they be diſtrained, they may ſue ſuch a Writ as a Prieſt may ſue, and thereupon an *Alias*, a *Pluries*, and Attachment, *&c.* And becauſe that Women are not ſworn in Leets as Men who are of the Age of twelve Years or more are; it is ſaid, that when a Woman is outlawed, that ſhe is *Wayve*, and not outlawed; for ſhe was never ſworn to the Law, *&c.* But a Man is ſaid outlawed, becauſe he was ſworn to the Law; and now for his Contumacy he is put from the Law, and ſaid outlawed, as it were *extra legem poſitus*; and a Woman is not ſo, for ſhe was never ſworn to the Law.

Wherefore a Man is ſaid outlawed.

B And by the Rule of the Regiſter, two Women may ſue that Writ unto the Sheriffs or Bailiffs of the Leet, that they do not diſtrain them to come to the Torn or Leet, *&c.*

See before 14 good Caſes for their Privileges.

C And if the Sheriff will diſtrain the Tenants in Antient Demeſne, to come unto the Leet or Sheriff's Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not diſtrain them, *&c.* to do any Suit at the Leet or Torn; and that Writ ſhall be ſued in all their Names if they will, as a *Monſtraverunt* ſhall be ſued: Or any of them may ſue the Writ in his own Name, if he be diſtrained to do ſuch Suit; and the Writ is ſuch:

The King to the Sheriff, &c. *The Men of the Manor of* D. *which is of the Ancient Demeſne of the Crown of* England, *have ſhewed unto us, that whereas they ought not to come to the Torn of the Sheriff or to the View of Frank-pledge out of the Liberty of the ſaid Manor, unleſs they themſelves or their Anceſtors, the Men and Tenants of the ſame Manor, have been accuſtomed to come in Times paſt; nevertheleſs you grievouſly diſtrain our Men aforeſaid to come to the Torn in* K. *or to the View of Frank-pledge in our Hundred of* K. *contrary to the Cuſtom hitherto uſed in the ſame Manor, and do very much unjuſtly diſquiet them upon that Occaſion, to the manifeſt Prejudice and Grievance of them the ſaid Men and Tenants: And becauſe we will not have any Injury done to the Men and Tenants aforeſaid, we command you, if it be ſo, that then you wholly deſiſt, for the Time to come, from bringing ſuch Diſtreſſes upon them for the Cauſe aforeſaid, and permit them to uſe and enjoy their Cuſtoms which they have hitherto reaſonably uſed, without Interruption or Challenge, that repeated Complaint may not come to us. Witneſs,* &c.

Mag. ch. p. 81.

D And if the Sheriff will diſtrain a Man to do Suit to the Hundred or Wapentake twice in the Year, to do Things appertaining to that Leet, then he ſhall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which ſhall be thus:

The King to his Bailiffs of the Wapentake of R. *greeting: Whereas in the Great Charter of the Liberties of* England *it is contained, That no Sheriff or his Bailiff ſhall keep his Torn in the Hundred but twice in the Year, and no where but in due Place and accuſtomed; that is to ſay, once after* Eaſter, *and again after the Feaſt of Saint* Michael; *and now from the Complaints of the Men and Tenants of the Abbot of* C. *we have received Information that you, contriving to aggrieve them the ſaid Men and Tenants in this Behalf, do now again grievouſly diſtrain them to come to our certain Wapentake aforeſaid, to preſent there thoſe Things which belong to the View of Frank-pledge, to the great Damage and manifeſt Prejudice of thoſe Men and Tenants, and contrary to the Tenor of the Great Charter aforeſaid; We willing the ſame Charter to be inviolably obſerved in all Things, command you, that you in no wiſe diſtrain the ſaid Men and Tenants to come before* *us to the Wapentake aforeſaid, to preſent thoſe Things which belong to the View of Frank-pledge, contrary to the Tenor of the Charter aforeſaid, and the Diſtreſs, if any*, &c.

And by that it appeareth, that he ſhall not diſtrain to come to the Hundred to preſent a Thing appertaining to the Leet but twice in the Year; but to do Suit at the Hundred, to do that which appertaineth (*a*) to the Hundred Court, he may diſtrain them ſeveral Times to do the Suit, and they ſhall have no Remedy, becauſe Suit at the Hundred is from three Weeks to three Weeks.

Writ de Quarentina habenda.

E THE Writ of *Quarentina habenda* lieth, where a Man dieth ſeiſed of any Meſſuage and Lands, *&c.* and immediately after the Death of the Huſband the Heir, or he who ought to have the Lands after his Death, will put the Wife out of the Meſſuage, *&c.* Then the Wife ſhall have this Writ; for by the Statute of *Magna Charta*, *cap.* 7. the Wife ſhall remain in the capital Meſſuage after the Death of her Huſband by forty Days, if it be not a Caſtle; and that Writ is *Vicontiel*, and ſhall be directed unto the Sheriff, and he ſhall hold Plea thereof; and the Writ is ſuch:

The King to the Sheriff, &c. *or to his Bailiffs of* S. *greeting: We have received Information by the Complaint of* B. *who was the Wife of* D. *that whereas it is contained in the Great Charter of the Liberties of* England, *That Widows ſhall remain in the capital Meſſuage of their Huſbands for forty Days after the Death of their ſaid Huſbands, unleſs thoſe Meſſuages be Caſtles, within which Time their Dowers ſhall be aſſigned to them, and that in the mean time they ſhall have reaſonable Eſtovers of the Goods thereof*; I. *of* C. *violently ejected her the ſaid* B. *immediately after the Death of her aforeſaid Huſband from the capital Meſſuage which was his the ſaid* D.'*s in* H. *(although it is not a Caſtle, and her Dower was not aſſigned to her) and did not permit her to take her Eſtover of the Goods thereof, to the great Damage and Grievance of her the ſaid* B. *and contrary to the Tenor of the Charter aforeſaid: And becauſe we will not that the aforeſaid* B. *be injured in this Matter, we command you that, having called before you the Parties aforeſaid, and having heard from them ſeverally their Reaſons thereupon, you cauſe to be done to her the ſaid* B. *full and ſpeedy Juſtice thereupon, according to the Tenor of the Charter aforeſaid, leſt for want of Juſtice repeated Complaint ſhall come to us. Witneſs*, &c. [162.]

Quære, If an Infant may keep the Poſſeſſion during the Time of Quarentine, by Force of the Statute of 8 H 6. 4 & 5 Ma. Dyer 161.

A And upon that Writ the Sheriff ſhall award Proceſs againſt the Party to come and anſwer the ſame, and ſhall not ſtay until the County Court be holden; for this Writ is a Commiſſion unto him, and upon the ſame he ſhall

Nota by Newton. The Woman ſhall not have Meat and Drink; for the Statute doth not extend to it. But Fitz-Herbert in abridging the Caſe queries, if ſhe may not kill any Things for her Proviſion, if there be not any Proviſion in the Houſe.

(*a*) *Note*; A Hundred is no more than a Court-Baron, and the Suitors there are Judges. 6 *Ed.* 4. 5. *per Cuſtom*; and yet for Suit to a Hundred-Court, one cannot diſtrain except by Preſcription, and in the Lands charged with the Suit. 5 *Ed.* 3. 52. 11 *Ed.* 3. *Avowry* 101. but he may be amerced by the Suitors for Default of Suit, and for ſuch Amercements their Cattle may be diſtrained, *&c.* 2 *H.* 4. 24. 11 *H* 4. 89. See 11 *Ed.* 3. *Avowry* 101. *per Parning.*

immediately make Proceſs againſt the Party for to anſwer, *&c.* within two or three Days, according to his Diſcretion, and thereupon to proceed as Juſtices ſhall do upon a Commiſſion of *Oyer* and *Terminer*, *&c.*

Writ of Contribution.

B THE Writ of Contribution lieth where there are Tenants in Common, or who jointly hold a Mill *pro indiviſo*, and take the Profits equally, and the Mill falleth into Decay, and one of them will not repair the Mill; now the other ſhall have a Writ to compel him for to be contributory to the Reparations; and the Writ is ſuch:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. B. *and* C. *that they be*, &c. *at* W. *&c. to ſhew wherefore, whereas they the ſaid* A. B. *and* C. *jointly hold a certain Mill undivided in* N. *and the Iſſues thence coming by equal Portion partake, and are bound to the Reparation and Support of the ſame Mill, and the ſaid* B. *and* C. *(although they receive the Proportion of thoſe Iſſues happening to them) deny to contribute to the Reparation and Support of the ſaid Mill, to the great Damage of the ſaid* A. *as he ſaith: And have there the Summoners and this Writ*, &c.

And if there be three or four Coparceners of Lands, and the eldeſt Siſter do the Suit to the Lord of whom the Lands are holden for all the Coparceners, and the others will not allow her for her Charges and Loſſes according to the Rate for the ſame Suit; that Coparcener who did the Suit may have this Writ of Contribution; and the Writ is ſuch:

The King to the Sheriff, &c. *If* B. *ſhall make you ſecure*, &c. *then ſummon* A. *and* I. *his Wife, and* R. *and* F. *his Wife, that they be before our Juſtices*, &c. *to ſhew wherefore, whereas by the Common Council*, &c. *that if any Inheritance*, &c. (as before, until) *and ſhe who hath the eldeſt Part of that Inheritance may do the Suit for herſelf and her Parceners of the ſame Inheritance, and that they the ſaid Parceners ſhall contribute to the doing that Suit, and a certain Inheritance which was* C.*'s in* R. *(for which one Suit only is due at the Hundred of* I. *of* N.) *is devolved to her the ſaid* B. *and the aforeſaid* A. *and* I. R. *and* F. *Parceners of the Inheritance aforeſaid, as we have received Information, and the aforeſaid* B. *who hath the eldeſt Part of that Inheritance, doth the Suit at the Hundred aforeſaid*, or *at the Court aforeſaid, for herſelf, and the aforeſaid* A. *and* I. R. *and* F. *her Parceners, they the ſame* A. I. R. *and* F. *deny to contribute towards doing that Suit, to the great Damage of her the ſaid* B. *and againſt the Form of the Proviſion aforeſaid, as ſhe ſaith: And have*, &c.

And if there be many Coparceners, and the eldeſt do the Suit, and the other Coparceners agree with the eldeſt for a Rate; now the Writ of Contribution ſhall be brought againſt the others, who would not contribute, *&c.* And if many be infeoffed of Land, for which one Suit ought to be done, *&c.* (*a*). Now if they agree among themſelves, that one of them ſhall do the Suit, and that the others ſhall contribute unto him, if he do the Suit, and afterwards the others will not allow him for that Suit according to their Rate,

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(*a*) And ſo it alſo ſeems of ſeveral Feoffees, for the Statute of *Marlebridge* does not limit in ſuch a Caſe who ſhall do the Suit.

then he ſhall have the Writ of Contribution againſt them, and the Writ ſhall mention the Agreement, *&c.* and if they cannot (*a*) agree, then the Lord ſhall diſtrain them all for all their Suits, if the Suit be not done; but if one Feoffee of his own Will do the Suit for them all, without any Agreement for the ſame Ant. 159. made between them, the Lord cannot then diſtrain the others for the Suit; for as to the Lord, it is not material whether there be any Agreement between them or not; but between the Feoffees, he that did the Suit ſhall not have the Writ of Contribution againſt his Companions, without Agreement thereof made D betwixt them. But if one Jointenant do make a Feoffment in Fee of his Part, his Feoffee ſhall do a ſeveral Suit by himſelf. But the other Jointenants ſhall do but one Suit by the Statute of *Marlebridge*, *cap.* 9. But every Tenant in Common ſhall do ſeveral Services and ſeveral Suits. And the Proceſs in this Writ is Summons, Attachment and Diſtreſs.

Writ de contra Formam Feoffamenti.

St. Marl. c. 9.

E THE Writ *de contra Formam Feoffamenti* lieth, where a Man doth infeoff another before the Statute of *Quia emptores terrarum*, (*b*) to hold of him by Homage, Fealty, and Rent by Deed, and afterwards he will diſtrain for Suit or other Services to be done unto him; he who was infeoffed, or his Heir, ſhall have this Writ of *contra Formam Feoffamenti*, *&c.* 5 Ed. 4. 85. Br. cont. Formam Feoffamenti.

F And this Writ may be directed unto the Lord himſelf, or unto his Bailiffs, commanding them that they do not diſtrain him againſt the Form of his [163.] A Grant; and this Writ is a Prohibition in itſelf. And if the Lord and Bailiffs do contrary to the Writs ſent to them, the Tenant thereupon ſhall have an Attachment, and a Diſtreſs; and the Form of the Writ is ſuch:

B *The King to* I. *or to the Bailiffs of* I. *greeting. Whereas by the Common Council of the Realm,* &c. *it is provided that none by reaſon of their Tenements be diſtrained to do Suit at the Court of their Lords, unleſs they are ſpecially bound to that Suit by the Form of their Feoffment, or they or their Anceſtors holding thoſe Tenements, have been accuſtomed to do it before the firſt Voyage of Lord King* Henry *into* Brittany*: We command thee or you, that you or ye, do not diſtrain* A. *to do Suit at your Court of* I. *or at the Court aforeſaid, of your Lord of* N. *againſt the Form of the Proviſion aforeſaid: And the Diſtreſs, if any,* &c.

(*a*) See *Kelw.* 131. *& ibid.* 30. *&c.* And yet the other joint Feoffees ſhall make but one Suit. See 45 *Ed.* 3. 23. *per Skipw.* If Land be charged to a Suit real, as to a Hundred or Wapentake, or other real Service, if the Land out of which the Suit iſſues comes to ſeveral Hands, ſo that each of them knows his Severalty, each of them ſhall make ſeveral Suits. See 11 *Ed.* 3. *Avowry* 101. If Land be charged with Suit to a Hundred, which is afterwards ſevered into Parcels, ſeveral Suits ſhall be made; yet ſee before 159. that the Statute of *Marlebridge* extends to Suit at the Hundred, and by *Shard* and *Stone*, when the Lands come afterwards into one Hand, there ſhall be but one Suit; but by *Parning* there ſhall be two Suits, and two Amercements. See the *Regiſter* 177. *Rex Ballivis, &c. Cum de communi concilio, &c. proviſum ſit quod ſi plures hæreditates ad unum hæredem deſcenderint, vel aliquis ſibi a diverſis feoffatoribus tenementa acquiſiverit, pro illis hæreditatibus & tenementis diverſis ad unicam curiam exigi non debeant ſectæ diverſæ, vobis præcipimus quod non Diſtringatis, &c.*

(*b*) But if the Feoffment be made before Time of Memory, one ſhall not have a *Contra formam Feoffamenti*, but a *Ne injuſte vexes*, for ſuch a Feoffment is not pleadable. 12 H. 4. 24.

17 Ed. 3. 8. And no Perſon ſhall have this Writ of *contra Formam Feoffamenti*, but he C
4 Co 121. b. who was (*a*) infeoffed, or his Heirs who are Privies to the Deed; but if the
14 H. 4. 5. Feoffee, to whom the Lands were (*b*) given to hold of the Feoffor and his
Heirs by the Deed, make a Feoffment over to hold of the chief Lord, &c.
the Feoffee ſhall not have this Writ *de contra Formam Feoffamenti*, becauſe
he is not Party or Privy to the Deed, but he ſhall (*c*) rebut the Lord by that
4 Ed 2. Avowry 122, 202. Deed, to claim other Services than are mentioned in the Deed. And that D
Writ is a Prohibition unto the Lord and his Bailiffs; and if he diſtrain after
22 H. 6. 50. the Writ delivered to him, the Tenant ſhall have an Attachment againſt him,
36 H. 6. 7. and thereupon he ſhall recover his Damages if it be found for him, &c. and
22 Ed. 3. 28. the Proceſs is Prohibition, Attachment and Diſtreſs.

And the Rule in the Regiſter is, *If any for Suits undue againſt the Form of* E
any Statute, to the Court of any to be done, be diſtrained, he may have a Prohibition againſt the Diſtrainer, and after an Attachment if need be: And afterwards
Attachment, nor can he be attached, unleſs a Prohibition be firſt directed unto
him.

10 Ed. 3. 25. And the Opinion of *Parning* is, *P.* 10 *Ed.* 3. That if a Man give Land in F
31 Ed. 1. Frankmarriage, or in Frankalmoign, that the Donor ſhall not have a Writ of
Avowry 249. *contra formam Feoffamenti*; nor his Heirs, becauſe there are not any Services
expreſſed in the Deed, for which Reaſon he is out of the Statute of *Marlebridge*, *cap.* 9. but they may rebut the Lord by ſuch Deed.

16 H. 3. And if the Lord confirm the Eſtate of the Tenant to hold by leſſer Services, G
Avowry 243. &c. The Tenant ſhall have a Writ of *contra Formam Feoffamenti*; if he be
11 Ed. 3. diſtrained for more Services than there are ſpecified in the Deed of Confirma-
ibid. 100. tion. *M.* 16 *Ed.* 3. *Avowry* 243. 30 *Ed.* 3. 13. *per Seton*, &c.

28 Ed. 3. 92. Avowry 241. And in a *contra Formam Feoffamenti*, the Perſon did count upon the Deed, H
and the Diſtrainer demanded *Oyer* thereof, and could not have it. *M.* 3 *Ed.* 2.
Action ſur le Caſe 5.

10 Ed. 3. 25. And the *contra Formam Feoffamenti* lieth only againſt the Feoffor and his I
7 Ed. 3. 8. Heirs.

(*a*) But the contrary has been adjudged, where the Feoffee of him to whom the Deed was made, brought the Writ againſt the Grantee of him who made the Deed, and he was adjudged to anſwer; and by *Wilby* it had been often ſo adjudged. 4 *Ed.* 3. 25. See 4 *H.* 4. 5. *per Thirn.* a Feoffee, &c. See 10 *Ed.* 3. 25. acc. *per Trem'.*

(*b*) See 4 *Ed.* 2. *Avowry* 202. *per Cur. cont.* if he had paid him himſelf. 4 *Ed.* 2. *ib.* 201.

(*c*) A Stranger may rebut the Feoffor or his Heirs by the Deed of Feoffment notwithſtanding the Seiſin. 5 *Ed.* 3. 19. 8 *Ed.* 3. 67. 4 *Ed.* 2. *Avowry* 202. See *contra* 4 *Ed.* 2. *Avowry* 401. *Rebutter* 22 *Ed.* 3. 18. altho' the Feoffment was made to a Stranger to the Tenancy, he ſhall not rebut a Stranger in the Seigniory, after Seiſin by Deed of Confirmation before Time of Memory, 11 *Ed.* 3. *Avowry* 100. nor by Deed of Feoffment, 10 *Ed.* 3. 25. he ſhall not forejudge the Tenant. 7 *Ed.* 3. 8. See 44 *Ed.* 3. 39. *contra per Kirt.* The Party rebuts the Lord by Confirmation of his Grantor, to hold by leſs Services. 28 *Ed.* 3. 92, 93. *per Cur.* See 10 *Aſſ.* 29. 28 *Aſſ.* 33. 12 *R.* 2. *Avowry* 266. 34 *Ed.* 3. *ibid.* 258. 19 *Ed.* 3. *ibid.* 122.

Writ de Coronatore eligendo vel exonerando.

K THE Writ *de* (*a*) *Coronatore eligendo* lieth, where a Man who is Coroner of any County dieth, or be diſcharged of his Office, then that Writ ſhall be awarded unto the Sheriff, that he in full County, by the Freeholders of the County, chuſe another in his Place, and to certify the Election, and his Name who is choſen, in the Chancery. 4 Ed. 4. 44.

L And in every County commonly there are four Coroners, and in ſome Counties ſix Coroners, and in ſome Counties leſs, as the Uſage is; and if any of them dieth, or is diſcharged, then ſhall iſſue ſuch Writ:

M *The King to the Sheriff*, &c. *Becauſe* L. *one of our Coroners in your County, is dead, as we have received Information*; *We command you, if it be ſo, that then in your full County, with the Aſſent of the ſame County, you cauſe to be choſen in the Place of him the ſaid* L. *one other Coroner, according to the Form of the Statute thereof ſet forth and provided, who having taken the Oath (as the Cuſtom is) from thenceforth ſhall do and keep thoſe Things which belong to the Office of Coroner in the County aforeſaid, and cauſe to be choſen ſuch a Perſon, who beſt may know and is able to attend that Office, and make known to us his Name. Witneſs*, &c.

And now it appeareth by the Writ, that upon Election made the Sheriff ſhall give him his Oath duly to execute his Office. *Vide Stat. Weſt.* 1. *cap.* 10.

N And the Coroner ſhall be diſcharged of his Office by the King's Writ ſent unto him, and thereupon ſhall iſſue another Writ directed unto the Sheriff to chuſe a new Coroner, and that Writ ſhall recite the (*b*) Cauſe of the Diſcharge of the other Coroner; and the Writ ſhall be ſuch:

L. 5 Ed. 4. acc. By our Judgm. Coroner ſhall not be diſcharged by Demiſe of the King because he is made by Writ; contr. of others, who are by Commiſſion.

The King to the Sheriff, &c. *Becauſe* R. *one of our Coroners of your County, is ſo much occupied in doing our divers Buſineſſes in your County, that he hath not Leiſure to exerciſe thoſe Things which belong to the Office of a Coroner in the ſame County (as we certainly underſtand) we have removed him from that Office*; *We command you that*, &c. *one other Coroner*, &c. (as above). Or thus, *Becauſe we have received Information from worthy Teſtimony, that* W. T. *one of our Coroners of your County, is ſo infirm and broken with old Age, that he is not able to exerciſe thoſe Things*, &c. *we have commanded him the ſaid* W. *to be removed from that Office*; *And therefore we command you*, &c. Or thus, *Becauſe* W. *one of our Coroners*, &c. *is unfit to execute that Office, as from the Relation of*, &c. Or thus, *Becauſe we have received Information, that* W. *lately choſen Coroner of the County aforeſaid, hath not Lands or Tenements in the ſame County, by which he can keep up his State for the exerciſing the Office* (*c*) *aforeſaid: We command*

4 Ed. 4. 41.

(*a*) *Note*; A Coroner made Sheriff is diſcharged from his Office of Coroner. *C. L.* 79.

(*b*) But this Cauſe is not traverſable. 5 *Co.* 58.

(*c*) *Note*; If there are four Coroners in one County, and a Writ is directed to them, if one dies, yet the other three may execute the Writ, becauſe there ſtill remains the greater Number; but if before the Execution of the Writ, three ſhall die, ſo that there is only one remaining, he cannot execute the Writ until others are elected. 14 *H.* 4. 39. If there are four Coroners, and a Writ is directed to them, three Coroners cannot make a Return of the Execution of the Writ. 31 *Aſſ.* 20. But if one of them makes Execution of it, and the Return is by all of them, there it is good, as if one of them only ſits at the County-Court on the Exigent. 14 *H.* 4. 34. *per Hank.* in a *Capias.* 39 *H.* 6. 41.

[164.] *you*, &c. Or thus, *Becauſe* A. *one of our Coroners*, &c. *is ſtruck with the Palſy*, &c. Or, *Becauſe he dwells in the extreme Parts of the whole County, by which he cannot conveniently exerciſe thoſe Things which belong to the Office*, &c. Or, *Becauſe he is choſen into the Office of Sheriff of the County aforeſaid*, or *is choſen Verderor of our Foreſt of* S. *by which*, &c. Or, *Becauſe he hath not one hundred Shillings of Land, as it is ſaid*, or *becauſe he is not a Knight*, &c.

But it ſeemeth, that at this Day this laſt Clauſe is not Cauſe for to remove the Coroner: For if he have ſufficient Lands within the County, it ſufficeth, although he be not a Knight, notwithſtanding the Statute which requireth that he be a Knight. For thoſe Words are put into the Statute, to the Intent that he ſhould have ſufficient within the County, and for no other Cauſe. And it A ſeemeth, the King by his Writ may command the Sheriff to chuſe two or three Coroners, if there want ſo many in the County.

And if the Sheriff chuſe one to be Bailiff of the Hundred or Wapentake; or if the Lord of a Liberty chuſe one to be Bailiff of the Liberty, who hath not ſufficient Land within the County, according to the Statute of *Weſt.* 2. (but ſee the Statute of 2 *Ed.* 3. *cap.* 4. thereof) then a Writ ſhall be ſent to the Sheriff for to diſcharge ſuch Bailiff, and to chuſe another in his Place, and upon that a Man may have an *Alias* and *Pluries*, and Attachment againſt the Sheriff, if that he do not according to the Writ; and the Writ is ſuch:

The King to the Sheriff, &c. *Whereas in the Statute lately ſet forth at* Weſtminſter *it is contained, That no Man ſhall be Sheriff or Bailiff of a Liberty, Wapentake, Hundred or Tithing, unleſs he hath Lands and Tenements ſufficient in the ſame County, from whence he may be able to anſwer to us or our People in this Behalf, if any one ſhall complain againſt him; and now we underſtand, that you have made* W. *of* T. *who hath not Lands or Tenements in the ſame County, Bailiff of our Wapentake of* B. *in Contempt of us, and to the great Damage and Grievance of our People in this Behalf, and againſt the Form of the Statute aforeſaid; And therefore we command you, if it be ſo, that then you cauſe him the ſaid* W. *to be removed from the Office of Bailiff aforeſaid without Delay, and cauſe another competent Perſon to be conſtituted and ordained in his Place, according to the Form of the Statute aforeſaid. Witneſs*, &c.

Writ de Electione Viridariorum Foreſtæ.

C THE Writ of Election of the Verderors of the Foreſt lieth, where any of the Verderors are dead, or removed from their Offices, *&c.* Then the King ſhall ſend a Writ to chooſe another in his Place, and it ſhall be directed to the Sheriff, and is ſuch:

The King to the Sheriff, &c. *Becauſe* A. *lately one of our Verderors of our Foreſt of* D. *is dead, as we have received Information; Therefore we command you, if ſo it is, that then in your full County, with the Aſſent of the ſame County, you cauſe to be choſen in the Place of him the ſaid* A. *one other Verderor, who having taken the Oath (as the Cuſtom is) from thenceforth may do and keep thoſe Things which belong to the Office of Verderor in the Foreſt aforeſaid,* &c.

And by that it appeareth, that the Verderor ſhall be choſen in the ſame Manner as the Coroner of the County ſhall be choſen by the Freeholders of the County.

D And if a Coroner or Verderor be diſcharged of his Office by falſe Suggeſtion by the King's Writ directed to the Sheriff, then the Party may come into the Chancery, and require a Commiſſion to enquire of the ſaid falſe Suggeſtion, and to return the Inquiry before the King into the Chancery; or the Juſtices of the Foreſt may certify the King of the falſe Suggeſtion under their Seals; and if it be found to be falſe, then the King may make a *Superſedeas* to the Sheriff, that he do not remove the Verderor, if, *&c.* And if he be removed that he ſuffer him to exerciſe his Office as he did before; and the Writ is ſuch:

The King to the Sheriff, &c. *Although it hath been ſuggeſted unto us in our Chancery, that* A. *one of the Verderors in our Foreſt of* S. *had not Lands or Tenements within the Limits of the Foreſt aforeſaid, nor dwelt within the ſaid Foreſt, and we commanded you, if it was ſo, that then in your full County, with the Aſſent of the ſame County, you ſhould cauſe to be choſen in the Place of the aforeſaid* A. *one other Verderor, who having taken the Oath (as the Cuſtom is) ſhould do and keep thoſe Things which belong to the Office of Verderor in the Foreſt aforeſaid: Nevertheleſs, becauſe it is certified before us in our Chancery by our beloved and faithful* I. *of* S. *our Juſtice of our Foreſt beyond* Trent, *that he the ſaid* A. *hath ſufficient Lands and Tenements within the Foreſt aforeſaid, and is fit and ſufficient for the Office aboveſaid; We being unwilling that he the ſaid* A. *be removed from that Office by occaſion of this falſe Suggeſtion, command you, that you wholly ſuperſede the Execution of our ſaid Writ to you directed by reaſon of the ſaid falſe Suggeſtion, and permit him the ſaid* A. *to exerciſe that Office as hath hitherto been accuſtomed to be done. Witneſs,* &c.

Writ for the Election of the Clerk to take Obligation upon Statutes-merchant.

THE Writ for the Election of the Clerk aſſigned to take and make Obligation thereof by Statute-merchant, lieth where the Clerk who is aſſigned to take ſuch Obligation, dwelleth in another Place, or is buſied in other Affairs, that he cannot intend or follow the Office, or that he hath not [165.] ſufficient Lands, *&c.* to anſwer for his Miſdoing; then upon a Surmiſe made in the Chancery, ſuch Writ ſhall be made directed unto the Mayor or Bailiff to diſcharge him, and to chuſe another; and the Writ is ſuch, *viz.* E

The King to the Bailiffs and to the honeſt Men of the Town of H. *greeting: Becauſe we have received Information from the Relation of many Perſons, that* R. *who now hath the Cuſtody of the greater Piece of the Seal appointed for taking Obligations, according to the Form of the Statute of* Acton Burnell *in the Town aforeſaid, dwelleth not in the Town aforeſaid, by which he cannot attend to do thoſe Things which belong to his Office in this Behalf, to the great Expence and Grievance of the Merchants and other Perſons reſorting to the ſaid Town: We command you, if it is ſo, that then you cauſe to be choſen in the Place of him the ſaid* R. *one other Man of the Town aforeſaid who better knows and can attend to do thoſe Things belonging to that Cuſtody, and certify us of the Name of him whom you ſhall ſo chuſe, diſtinctly and openly, under your common Seal, without Delay, ſending to us this Writ. Witneſs,* &c.

And it appeareth by the Statute *de Mercatoribus*, that the King ſhall make the Clerk; and by it appeareth, that the Mayor or Bailiffs ſhall chuſe the Clerk, *&c.* but it ſeemeth that Writ is granted *ex gratia Regis.* For he might ſend a Writ of Diſcharge unto the Clerk, and make a new Clerk (as it ſeemeth) at his Pleaſure.

(*a*) *Writ* de non ponendis in Aſſiſis & Juratis.

29 Ed. 3. 15. One was choſen by Knights in a Writ of Right upon the Grand Aſſiſe, and after he ſhewed a Charter of Exception, De non ponendis, &c. and it was not allowed, the ſame Suit in Attaint.

THE Writ *de non ponendis in Aſſiſis & Juratis* is grounded upon the Statute of *Weſt.* 2. *cap.* 38. and upon the Statute of *Articuli ſuper Chartas*, *cap.* 9. which Statutes declare what Perſons the Sheriff ought for to impanel, and what Number he ought to impanel in Juries and Inqueſts, and the Writs declare the Effects of the Statutes; and the Writ ſhall be ſuch: A

(*a*) *Note*; The Sheriff or other Officer who diſcharges any Perſon by Colour of any Writ, *&c.* to ſerve as a Juror, who is under ſeventy Years of Age, forfeits twenty Pounds by Stat. 7 and 8 *W.* 3. *Vide poſt.* D.

The King to the Sheriff, &c. *Whereas amongſt other Articles which Lord* E. *formerly King of* England, *&c. ordained for Amendment of the State of his People, it is granted, that no Sheriff or Bailiff ſhall put in Inqueſts nor Juries more Men, nor other Perſons, nor in other Manner, than is ordained by the Statute, and that they ſhall put in Inqueſts and Juries ſuch Men as be neareſt Neighbours, moſt ſufficient and leaſt ſuſpicious, and he who ſhall do otherwiſe, and ſhall be attainted thereupon, ſhall pay the Plaintiff his Damages double, and be in our great Mercy; We command you, that in the Jury of twenty-four Knights, which* H. T. *of* K. *hath arraigned before,* &c. *by our Writ againſt* W. F. *to convict the Jurors of the Aſſiſe of Novel Diſſeiſin, which between him the ſaid* W. *and the ſaid* H. T. *and others contained in our original Writ, was ſummoned and taken at* E. *by our Writ before us, of Tenements in* C. *you cauſe to be put Men neareſt to that Neighbourhood, moſt ſufficient and leaſt ſuſpicious, by whom the Truth of the Matter may be better known and inquired, according to the Form of the Articles aforeſaid, and this in no wiſe omit.*

B And by this Writ it appeareth: When a Man ſueth an Aſſiſe of Attaint, or ſuch Actions in which are Jurors at the firſt Day, &c. that he may alſo ſue this Writ directed to the Sheriff, that he return the Panel according to the C Statute; and if the Sheriff do not accordingly, then it ſeemeth the Party ſhall have an Attachment againſt the Sheriff. And this Writ may be ſued as well by the Defendant as by the Plaintiff or Demandant, and alſo although that the Party do not ſue forth the Writ, yet if the Sheriff or Bailiff of the Liberty return a Panel againſt the Form of the Statute, the Party Defendant or Plaintiff may have an Action upon the Statute againſt the Sheriff, &c. becauſe the Statute is a Prohibition in itſelf; and the Form of the Writ of Attachment upon the ſame is ſuch:

The King to his Coroners in the County of Lincoln, *&c. Put by Gages,* &c. B. *our Sheriff of the County aforeſaid, that he be before,* &c. *to ſhew wherefore, whereas amongſt other Articles,* &c. (as above, till) *in our great Mercy; And lately (at the Proſecution of* H. *affirming that a certain Inqueſt ought to have been taken before our Juſtices aforeſaid in a Plea which was before the ſame Juſtices by our Writ between* R. *Demandant, and* T. *Tenant of the Manor of* S. *with the Appurtenances) we commanded the ſaid Sheriff, that he ſhould put in that Inqueſt Men neareſt Neighbours, moſt ſufficient and leaſt ſuſpicious, according to the Form of the Statute and Articles aforeſaid, he the ſaid Sheriff hath put in the ſame Inqueſt Men moſt remote, leaſt ſufficient and moſt ſuſpicious, contrary to the Form of the ſame Statute and Articles, and againſt the Tenor of our ſaid Command, as it is ſaid: And have,* &c.

D And by the Statute of *Weſtm.* 2. aforeſaid, the Sheriff ought not (*a*) to impanel Men who are ſick or decrepit, nor Men who at the Time of the Summons were not dwelling within the County, nor Men above the Age of threeſcore and ten Years, &c. and if he do, then he, or thoſe who are impanelled by the Sheriff, may ſue this Writ unto the Sheriff, commanding him that he do not impanel them, &c. Weſt. 2. Bro. Jurors 49.

(*a*) See the Stat. 7, 8 *W.* 3. cited *ſupra*, A.

48 Ed. 3. 30. 27 H. 8. 22. And Barons who are Lords ſhall not be impanelled upon Inqueſts nor Aſſiſes, *&c.* if their Preſence be not neceſſary; but they ſhall have a Writ unto the Sheriff to diſcharge them thus:

E *The King to the Sheriff*, &c. *Becauſe the Barons of our Realm have not been accuſtomed to be put in any Aſſiſes, Juries or Recognizances, as they ſay, unleſs their* [166.] *Oath be ſo neceſſary, that the Truth cannot be inquired without them; We command you that you do not put, or cauſe to be put, our beloved and faithful* A. *in any Aſſiſes, Juries or Recognizances, againſt his Will, without our ſpecial Command, unleſs his Preſence be for ſome Cauſe ſpecially required. Witneſs*, &c.

But if the Sheriff hath returned any Lord in Juries or Aſſiſes, *&c.* then he ought to bring a Writ unto the Juſtices, reciting that he is a Peer of the Realm, commanding them for to diſcharge him, otherwiſe he ſhall be ſworn, and if he do not appear, he ſhall loſe Iſſues, *&c.*

A There are alſo other Writs for thoſe who are Sick, or paſt ſeventy Years of Age, or thoſe who are not dwelling in the County, and the Writ is ſuch:

The King to the Sheriff, &c. *Whereas by the Common Council*, &c. *it is provided that Men continually infirm*, or thus: *That Men not dwelling in the Country at the Time of the Summons of the Sheriff.* Or thus: *That Men exceeding the Age of ſeventy Years, ſhall not be put in Aſſiſes, Juries*, &c. *We command you, that if* A. *be continually infirm*; or thus, *exceeding the Age of ſeventy Years*; or, *at the Time of your Summons ſhall not be dwelling in your Bailiwick, or your County, then that you put not, or cauſe to be put, him the ſaid* A. *in Aſſiſes, Juries or Recognizances, againſt the Form of the Proviſion aforeſaid. Witneſs*, &c.

Ant. 16. Poſt. 266. B Clerks who have Lands or Tenements by Deſcent or Purchaſe, may be put and ſworn in Aſſiſes and Inqueſts as well as other Lay Perſons, as appeareth by the Regiſter; and it ſeemeth the Law is ſuch. But if ſuch Clerk be in the King's Service, he ſhall have a ſpecial Writ for to diſcharge him; and the Writ is ſuch:

The King to the Sheriff, &c. *Becauſe Maſter* R. *Clerk, at this Time continually abideth in our Service*, or *in the Service of the venerable Father* I. *Biſhop of* Ely; *We command you, that him the ſaid* R. *by reaſon of the Lands and Tenements which he holds in the County aforeſaid, you put not or cauſe to be put in any Aſſiſes, Juries or Recognizances, ſo long as he abides in the Service of us, or of the ſame Biſhop, as aboveſaid. Witneſs*, &c.

And by the Writ it appeareth, that a Clerk ſhall be put and returned in Panels and Juries, if he be not in the Service of the King or other Perſon for whom the King will write to the Sheriff, that he do not impanel him, *&c.* but if the Sheriff do impanel and return ſuch Clerks, they ought for to appear, otherwiſe they ſhall loſe Iſſues, and they have no Remedy if they have not ſuch Writ as before.

C And if the Sheriff do impanel, or return them in Juries after ſuch Writ directed unto him, then, as it ſeemeth, they ſhall have Attachment againſt the Sheriff, *&c.*

St. 21 Ed. 3. Jurors, p. 3. D But if the Sheriff do return Men who are dwelling in other Counties, or paſt ſeventy Years of Age, or thoſe who are Sick, then they ſhall have an Action upon the Statute againſt the Sheriff, although they have not ſued forth ſuch Writ, directed to the Sheriff, becauſe the Statute is a Prohibition to him, that he return not ſuch Perſons, and, it ſeemeth, the Sheriff is bounden to take Notice of the Statute at his Peril; *tamen quære.*

And if the Sheriff do return any Panel-Men who are not ſufficient to paſs in the Action of Lands and Tenements, *&c.* then the Juror may have an Action upon the Statute; which is ſuch:

The King to the Sheriff, &c. *Whereas for the common Utility of the People of our Realm it is appointed by the Common Council of the ſame Realm, that no Perſon be put in any Aſſiſes, Juries or Recognizances, unleſs he hath Lands and Tenements to the Value of forty Shillings by the Year at leaſt, yet ſo that before Juſtices Itinerant at Common Pleas in their Eyres, and alſo in Aſſiſes, Juries or Recognizances which happen to be made in Cities, Boroughs and other Towns, may be done as hath heretofore been accuſtomed to be done; We command you, that if* A. *hath not Lands or Tenements to the Value of ſo much by the Year, then put not or cauſe to be put him the ſaid* A. *in Aſſiſes, Juries or Recognizances, againſt the Form of the Statute,* &c.

E And if the Sheriff do the contrary, *&c.* he ſhall have an Attachment againſt the Sheriff. And by the Statute the Sheriff ought not to impanel any Juries to try any Matter which ſhall be tried out of the County, if they may not expend five Pounds by the Year, *&c.* And if he do, the Party ſhall have an Action upon the Statute of 21 *Ed.* 1. *de ponendis in Aſſiſis & Juratis.* Stat. 2 Ed. 1. Jurors 3.

F And if the Sheriff return any Panel-Men who dwell within Ancient Demeſne for their Lands within Ancient Demeſne, then they may have a Writ againſt the Sheriff, that he do not return them; and the Writ is ſuch: Ant. 14. F.

The King to the Sheriff, &c. *Whereas according to the Law and Cuſtom of our Realm hitherto obtained and approved, the Men and Tenants of the Manors which are of the Ancient Demeſne of the Crown of* England, *for the Lands and Tenements which they hold of the ſame Demeſne, ought not to be put in any Aſſiſes, Juries or Recognizances, except only in thoſe which ought to be made in the Court of ſuch Manor; We command you, that you put not or cauſe to be put our Men and Tenants of our Manor of* I. *which is of the Ancient Demeſne of the Crown of* England, *(as it is ſaid) for the Lands and Tenements which they hold of the ſame Manor, in any Aſſiſes, Juries or Recognizances out of the Court of the Manor aforeſaid, contrary to the Law and Cuſtom aforeſaid, except they hold Lands and Tenements of another Tenure, by which, according to the Form of the Statute provided by the Common Council of the Realm, they ought to be put in Aſſiſes, Juries or Recognizances, and the Diſtreſs, if you ſhall have made any upon thoſe our ſaid Men and Tenants by the Occaſion aforeſaid, you ſhall releaſe to them without Delay. Witneſs,* &c.

And by that Writ appeareth, that all the Tenants may ſue the Writ, as they may ſue forth a *Monſtraverunt*; and if the Sheriff do contrary to the Writ, they ſhall have an Attachment againſt him, and any of the Tenants may ſue the Writ in his own Name if he will; and then the Writ ſhall be ſuch: [167.]

The King to the Sheriff, &c. (as above, till) *We command you, that* A. *Tenant,* or thus, A. *and* B. *Tenants of the Manor of* M. *which is of the Ancient Demeſne of,* &c. (as above).

And although that the Manor be not in the King's Hands; yet the Tenants ſhall have the Writ againſt the Sheriff, if he impanel them, *&c.* And alſo they ſhall have the ſame Writ againſt the Bailiffs of the Liberty who have Return of Writ, if they return any of the Tenants who hold of a Manor which is Ancient Demeſne, for Juries, Aſſiſes or Inqueſts, *&c.*

And alſo the Sheriff ought not to return Coroners in Aſſiſes, Juries or Inqueſts, nor Verderors, nor Foreſters, nor other Officers of the Foreſt, and they may have a Writ for to diſcharge them; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Becauſe* A. *one of our Coroners of your County, cannot attend to exerciſe thoſe Things which belong to the Office of Coroner in the ſame County, if he be put in any Aſſiſes, Juries or Recognizances out of the ſame County; We command you, if it be ſo, then that you put not or cauſe to be put* A. *in any Aſſiſes, Juries or Recognizances out of your County, whereby he may be leſs able to attend the Office abovesaid.*

And by that it appeareth, that the Sheriff may return the Coroner to inquire of Affairs in the County before Commiſſioners or Juſtices of the Peace. But upon Actions ſued in the Common Pleas or King's Bench, they ſhall not be returned in any Panel. And for Verderors or Foreſters, or other Officers, the Writ is ſuch: A

The King to the Sheriff, &c. *Whereas Lord* Edward *formerly King of* England, *our Progenitor, by his Letters Patent granted for himſelf and his Heirs, that Foreſters, Verderors, or other Miniſters of his Foreſt, ſhould not be put in any Aſſiſes, Juries or Recognizances to be taken out of the Foreſt; We command you, that if* A. *be our Verderor of our Foreſt of* S. *or Foreſter*, &c. *then put not or cauſe to be put him the ſaid* A. *in any Aſſiſes, Juries or Recognizauces* (*a*) *to be taken out of that Foreſt, according to the Form of the Proviſion aforeſaid, and the Diſtreſs, if any*, &c. Or thus: *Becauſe one of our Verderors of our Foreſt of* S. *in your County, cannot attend to exerciſe thoſe Things which belong to the Office of a Verderor in the ſame Foreſt, if he be put in Aſſiſes*, &c. *out of the Foreſt aforeſaid; We command you*, &c. (as above).

Writ upon the Statute of 23 Ed. 3.

Stat. 22 Ed. 3. Labourers, p. 2.

IF a Man do retain my Servant being in my Service, for which the Servant departeth from me, *&c.* and goeth to ſerve the other, I ſhall have an Action againſt him who retained him, and againſt the Servant, upon the Statute of 23 *Ed.* 3. And the Writ ſhall be Attachment againſt them, becauſe the Statute is a Prohibition to them, that they ſhall not do ſo; and the Form of the Writ is ſuch: B

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then attach* I. *of* B. *ſo that you may have him before our Juſtices*, &c. *as well to anſwer us as the aforeſaid* A. *wherefore, whereas it is ordained by us and our Council, for the common Utility of our Realm, that if any Mower, Reaper, or other Labourer or Servant, of whatever State and Condition he ſhall be, retained in the Service of any Man, ſhall depart from the ſaid Service before the End of the Term agreed upon,*

(*a*) See *Rot. Clauſ.* 9 *H.* 3. *m.* 5. *Viridarii & Foreſtarii Domini Regis de Feodo non ponantur in Aſſiſis.*

without reaſonable Cauſe or Licence, he ſhall undergo the Pain of Impriſonment, and no Perſon under the ſame Puniſhment ſhall preſume to receive or retain ſuch Servant in his Service, nor ſhall any Perſon pay or promiſe to pay to any Servant greater Wages, Liveries, Rewards or Salaries, than were uſed to be given in the twentieth Year of the Reign of King Edward *the Third, our Progenitor, or was common one Year with another in the five or ſix Years next preceding, under the Penalty of double of that which ſhall be ſo paid or promiſed, to be applied to his Uſe who ſhall perceive himſelf aggrieved by this, the aforeſaid* I. *retained in his Service at* B. R. *of* C. *lately ſerving him the ſaid* A. *who, from the ſame Service before the Term agreed between them (Promiſe being made to him by him the ſaid* I. *of a Salary to be received more than uſual) without a reaſonable Cauſe and the Licence of the aforeſaid* A. *departed into the Service of him the ſaid* I. *although he hath been requeſted to reſtore the aforeſaid* R. *to him the ſaid* A. *he hath admitted and retained him, in Contempt of us, and to the great Damage of him the ſaid* A. *and contrary to the Form of the Ordinance aforeſaid; alſo attach the aforeſaid* R. *ſo that you may then have him there as well to anſwer us as the ſaid* A. *wherefore he departed from the Service of the ſaid* A. *without a reaſonable Cauſe and his Licence as aforeſaid, in Contempt of us, and to the great Damage of him the ſaid* A. *and contrary to the Ordinance aforeſaid: And have there this Writ. Witneſs,* &c.

And he may ſue the Writ againſt the Maſter only, or againſt the Servant only, and it appears when the Writ is againſt the Maſter and the Servant, then there are ſeveral Attachments made in the Writ. 9 *H.* 6. 7.

C (*a*) And if a Man be required to ſerve, and hath not Lands nor Tenements to live upon, nor other Art or Trade, and he refuſeth to ſerve, then he who requireth him to ſerve ſhall have this Writ: Stat. 23 Ed. 3. c. 1.

The King to the Sheriff, &c. *If* W. *&c. then attach* R. *ſo that you may have him before our Juſtices,* &c. *as well to anſwer us as the aforeſaid* W. *wherefore, whereas it is ordained by us and our Council, for the common,* &c. *that every Man and Woman of our ſaid Realm, of whatſoever Condition he ſhall be, free or ſervile, being able in Body and within the Age of ſixty Years, not living by Merchandize, nor exerciſing a certain Craft, nor having of his own whereof he can live, nor Land of his own, about the Tilling whereof he can occupy himſelf, and* [168.] *not ſerving another, if he ſhall be required to ſerve in a fit Service, his State being conſidered, he ſhall be bound to ſerve him who ſhall firſt come to require it, and ſhall receive only the Wages, Liveries, Rewards or Salaries, which in the Places he ought to ſerve were accuſtomed to be paid in the twentieth Year of the Reign of King* Edward *the Third, or common in the five or ſix Years one with another preceding; and if ſuch Man or Woman ſo required to ſerve will not do this, he ſhall be immediately taken and ſent to the next Gaol, and ſhall abide there under cloſe Cuſtody until he ſhall find Security to ſerve in Form aforeſaid, he the ſaid* R. *being of ſuch Condition, hath abſolutely refuſed to ſerve the aforeſaid* W. *although he hath been often requeſted to ſerve him the ſaid* W. *for a Salary competent to his State and accuſtomed in the ſaid preceding Years one with another, in Contempt of us, and to the great Damage of him the ſaid* W. *and contrary to the Form of the Ordinance aforeſaid: And have,* &c. *Witneſs,* &c.

(*a*) See 39 *Ed.* 3. 6. one cannot join, in one Writ, two Perſons who refuſe to ſerve.

Br. Labourers 2. And if the Servant be retained in Winter to ſerve, and after he will depart from his Maſter in the Summer, and ſerve in another Place, then he whom he ſerved in Winter, ſhall have a Writ to compel him to ſerve him in Summer, which is ſuch: A

The King to the Sheriff, &c. *If* W. *of* C. *&c. then put* I. *of* S. *that he be*, &c. *as well to anſwer us as the aforeſaid* W. *of* C. *Wherefore, whereas it is appointed by us and our Council for the common Utility of our Realm, that no Servant of whatſoever State or Condition he ſhall be, ſhall go away out of the Town where he dwelt in the Winter, to ſerve elſwhere in Summer, if he can find a Service in the ſaid Town, under the pain of Impriſonment, except that the Men in the County of* Stafford, Lancaſter *and* Derby, *and of the Marches of* Wales *in the Time of* Auguſt, *may come to labour in other Counties, and ſafely, as hitherto they have been accuſtomed to do, and may return, the aforeſaid* I. *in the Service of him the ſaid* W. *at* F. *in Winter lately retained, hath refuſed to ſerve the aforeſaid* W. *or any other Perſon in the Town aforeſaid, although he hath been often requeſted to ſerve in the ſame Town for a competent Salary, in Contempt of us, and to the great Damage of him the ſaid* W. *and contrary to the Form of the Statute aforeſaid: And have there the Names of the Pledges and this Writ. Witneſs*, &c.

The Lords of Towns, or Juſtices of Peace, may commit Vagrants to Priſon, if they will not ſerve, and they may command the Gaoler to ſet him at Liberty without any other Writ. B

And if a Man be retained in Service, and go wandring abroad out of his Service, another Man may compel him to ſerve him, *&c.* becauſe he is out of Service. C

(*a*) And ſo if a Man do retain another's Servant, not knowing that he was in the Service of the other, he ſhall not be puniſhed for ſo doing, if he do not retain him after Notice of his firſt Service.

(*b*) An Infant of twelve Years of Age ſhall be bound by his Covenant to ſerve in Huſbandry. D

A Woman of ſuch Age ſhall be alſo bound to ſerve in Huſbandry by her Covenant.

(*c*) If a Man take an Infant or other out of another's Service, he ſhall be puniſhed, although the Infant or other were not retained.

An

(*a*) *Note*; If it be in the ſame County, he ought to take Notice of the firſt Reteiner at his Peril, but he is not puniſhable, if he be found Vagrant in another County, 17 *Ed.* 4. 7. 18 *Ed.* 4. 5. except he procure his Departure; and if ſo, he is puniſhable by the Statute, but if one retains a Servant, who has left his Maſter within the Term, or if one procures a Servant to depart within his Term, and after retains him, ſo that he has Notice, yet he is not puniſhable at Common Law *de Serviente abducto* 11 *H.* 4. 24. adjudged: *Sed quære*, and 9 *Ed.* 4. 32. ſeems *contra*; and if one takes my Servant out of my Service, againſt my Will, though it be with the Servant's good Will, yet a general Writ of Treſpaſs lies.

(*b*) See the like, where an Infant of ten Years old was diſcharged of an Action on the Statute; *contra* if he had been twelve Years old; yet by *Hankf.* a Writ lies againſt a Stranger who takes him, 2 *H.* 4. 18. an Infant by Cuſtom may bind himſelf Apprentice, 9 *H.* 6. 8. and the Diverſity agreed. See 21 *H.* 6. 31, 33. 9 *H.* 6. 10. Stat. 5 *Eliz.* of Labourers.

(*c*) See where a Servant was but nine Years old, in a Writ againſt him, and the Huſband and Wife who had retained him, the Infant was diſcharged, but the Huſband and Wife put to anſwer, and they plead that he was not retained by them, and Iſſue taken, *&c.* 29 *Ed.* 3. 27. but as it ſeems to me, *Finchden* there takes a

good

An Infant by his Covenant ſhall be bounden to ſerve in Huſbandry, although he may ſpend forty Shillings or twelve Marks by the Year.

E And ſo a Gentleman by his Covenant ſhall be bound to ſerve, although he were not compellable to ſerve. For if a Gentleman, or (*a*) Chaplain, or Carpenter, or ſuch which ſhall not be compelled to ſerve, &c. (*b*) yet if they covenant to ſerve, (*c*) they ſhall be bound by their Covenant, and an Action will lie againſt them for departing from their Service.

F And if a Man do retain one to ſerve him for forty Days, and another doth afterwards retain him to ſerve him for a Year, the firſt Covenant is avoided, becauſe the Retainer was not according to the Statute.

And ſo if a Man be retained to ſerve at every Time he ſhall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed; and without Deed it is void.

G And a Man ſhall not have an Action againſt an Apprentice upon his Departure, upon the Statute 27 *Ed.* 3. 22.

H And if a Man do retain one to ſerve him, and doth not expreſs for how long he ſhall ſerve him, he ſhall ſerve him for a Year; for that Retainer is according to the Statute. *Co. Lit.* 42. *b.* 9 *H.* 6. 7. 11 *H.* 4. 44. 41 *Ed.* 3. 13. 27 *Ed.* 3. 22.

If a Man who is not to have any Servant, do retain one to ſerve him, &c. the Retainer is void.

I He who hath not ſufficient Lands of his own to occupy, ſhall be compelled to ſerve.

K (*d*) And a Man may retain one for two or three Years, and it is good.

L And keeping from the Servant Meat and Drink, is a good Cauſe for his Departure from his Service. 39 *Ed.* 3. 22. 6 *Ed.* 4. 2.

And ſo for Battery; or Licence to depart, is a good Cauſe of Departure.

M The Lord may take his Villain out of the Service of another, (*e*) if he hath need of Servants, otherwiſe not. 19 *R.* 2. 50 *Ed.* 3. 22.

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good Diverſity, if the Servant departs firſt, (where he was never lawfully retained) there an Action does not lie againſt him who ſhall afterwards retain him; *contra* if he be taken with Force, &c. Action lies, tho' he found the Infant Vagrant, and retained him. 38 *Ed.* 3. 5. See 12 *H.* 8. 10, &c.

(*a*) A Writ does not lie on the Statute for Departure of a Chaplain who is retained to ſay Maſs. 10 *H.* 6. 8.

(*b*) See accordant 11 *H.* 6. 1. but by *Martin*, *Quære*, if he be retained only for a Day, if he ſhall defeat the Covenant, ſuppoſing the Requeſt to ſerve is for a Year.

(*c*) But the Count ought to be ſpecial. 11 *H.* 4. 33.

(*d*) 29 *Ed.* 3. 27. It is doubted if a Reteiner for more than a Year, be within the Statute. *Vide infra.*

(*e*) 29 *Ed.* 3. 41. Reſolved, 1. If a Villain be forced by Diſtreſs to go to his Lord, he ſhall be excuſed againſt him who retains him. 2. That though the Lord or his Feoffor have not been ſeiſed of the Villain for twenty or thirty Years, yet he is not enfranchiſed, but the Lord may take him. 3. That the Villain may juſtify his Departure, *cauſa qua ſupra*, by Attorney. See 30 *Ed.* 3. 31. They were at Iſſue whether the Lord had need of the Service of the Villain; and *Green* doubted if it was iſſuable. See 9 *H.* 4. 12. the Lord had Occaſion for his Service, and took him. See 19 *R.* 2. *Action on the Caſe* 52. for taking his Villain.

N If a Woman who is a Servant doth marry, yet it ſeemeth ſhe ought for to ſerve (*a*).

O If the Huſband and Wife be retained in Service during their Marriage, *&c.* if they depart from their Service, an Action upon the Statute lieth againſt them. 46 *Ed.* 3. *Bar.* 214.

P If the Servant be drawn away, the Maſter may re-apprehend him, and keep him in Spight of him.

Q If the Maſter's Wife do beat the Servant, it is good Cauſe for the Servant to depart and leave his Service.

Note; A Reteiner by her is not within the Stat. 2 *Ed.* 4. 15.

[169.]

Writ de Reſtitutione Temporalium.

A THE Writ of Reſtitution of the Temporalties lieth, in caſe a ſpiritual Perſon be elected a Biſhop, and conſecrated, *&c.* then he ſhall have this Writ unto the Eſcheator, *&c.* And ſo it is of an Abbot or Prior, which is of the King's Foundation, and ought to have the King's Royal Aſſent, *&c.* when he is elected and eſtabliſhed Abbot or Prior, (*b*) he ought to ſue a Writ to be reſtored unto the Temporalties; and the Form of the Writ for the Prior is ſuch:

The King to his Eſcheator in the County of Devon, *greeting: Whereas the venerable Father* H. *Biſhop of* Exeter, *hath lately confirmed the Election made in the Conventual Church of* P. *of our beloved in Chriſt Friar* I. *of* C. *Canon of the ſame Houſe, to the Priory of that Place (to whom we had before given our Royal Aſſent and Favour) as appears by the Letters Patent of him the ſaid Biſhop to us thereof directed; We accepting that Confirmation have taken the Fealty of him the ſaid Elect, and have reſtored to him the Temporalties of the Priory aforeſaid (as the Cuſtom is): And therefore we command you, that you deliver to him the ſaid Elect the Temporalties of the Priory aforeſaid in Form aforeſaid.*

B And by that Writ appeareth, when a Priory or Abbey is void which is of the King's Foundation, that they ought for to have the King's Royal Aſſent to go to the Election; and after the Election made the Biſhop ought to confirm the Election, and to certify the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this Writ to reſtore the Temporalties.

And there is another Writ when the King granted only his Aſſent to go to the Election, and to make the Prior, without any Certificate made before of the Election, and the Writ is ſuch:

(*a*) See *contr. per Cur'*, 11 *H.* 4. 13. that it is not lawful to take her during the Eſpouſals. 46 *Ed.* 3. *Bar.* 214. 7 *R.* 2. *Treſpaſs* 206.

(*b*) And ſometimes it was by Mandate to the Tenants of the Abbey, *&c. quod ſint intendentes Abbati electo, Rot. Parl.* 1 *Ed.* 1. *m.* 20. *pro Abbate de Wells*, and ſee there *pro Epiſcopo Cant. Rot. Parl.* 2 *Ed.* 1. *m.* 24. *pro Priore de Southwick*; and ſee the Charter of King *John, Mat. Paris* 352. *Salva nobis & hæredibus noſtris Cuſtod. Eccleſiarum & Monaſterior' Vacantium, &c.*—— *Et vide Quæ vacant ſpectant ad Regem*, 31 *Ed.* 3. *Ayd de Roy* 103. 19 *Ed.* 2. *Quare impedit* 178. *Rot. Clauſ.* 6 *Ed.* 3. *m.* 23. *viz.* not of Churches Appropriate.

The King, &c. *Whereas the venerable Father*, &c. *hath preferred our beloved in Chriſt* C. *of* D. *Canon of the ſame Houſe, elected to be Prior of that Place (to which Election we had firſt given our Royal Aſſent and Favour) to be Prior and Paſtor of the ſame Place, as appears by the Letters Patent of him the ſaid Biſhop to us thereof directed; We allowing that Preferment have taken Fealty of him the ſaid Governor, and the Temporalties of the Priory aforeſaid*, &c. (as above).

C And the Prior ſo elected and eſtabliſhed may have a Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, *&c.* and that they be Attendants, *&c.*

D And where the Prior or Abbot ought to have the King's Royal Aſſent to go to Election, and obtain the ſame, and afterwards make the Election, and the Biſhop doth avoid it, and afterwards they ſubmit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, *&c.* and make him Prior, and certify the King thereof by his Letters, the King thereupon may grant ſuch Writ, *viz.*

The King, &c. *Whereas the venerable Father* I. *Biſhop of* Wincheſter, *hath avoided the Election lately made in the Church of* S. D. *near* S. *of our beloved in Chriſt Friar* T. *of* N. *Canon of the ſame Houſe, to be Prior of that Place; and by virtue of the Submiſſion of the Convent of the Place aforeſaid made to him, to provide for the ſame Priory a fit Prior for that Turn, hath preferred our beloved in Chriſt Friar* I. *of* W. *Canon of the ſame Priory, to be Prior and Paſtor of that Place, as appears by the Letters Patent of him the ſaid Biſhop to us thereof directed; We being willing to deal graciouſly with him the ſaid* I. *have taken Fealty of the ſaid* I. *and have reſtored to him the Temporalties of that Priory (as the Cuſtom is): And therefore we command you*, &c. (as above).

And by that Writ it appeareth, that the Writ is of the King's ſpecial Grace; for the King might lawfully refuſe the Eſtabliſhment of the Prior, becauſe he was not elected according to the King's Licence and Aſſent to the ſame, *&c.* But yet the common Uſe is, that if they cannot agree in the Election, to ſubmit themſelves unto the Award of the Ordinary.

E And there is another Form of Writ where the King grants his Royal Aſſent to any Chapter to chuſe the Biſhop, and they chuſe one of the Chapter; and becauſe the Archbiſhoprick is void, the Guardian of the Spiritualties doth (*a*) certify that Election unto the King, and his Confirmation upon the ſame; and upon that the King grants a Writ of Reſtitution, *&c.* in ſuch Form:

The King, &c. *Whereas our beloved in Chriſt the Prior and Chapter of the Church of Chriſt of* Canterbury, *Guardians of the Spiritualties (the Archiepiſcopal See of* Canterbury *being void) have confirmed the Election lately celebrated in the Cathedral Church of the diſcreet Man Maſter* H. *of* H. *Archdeacon and Canon of the ſame Church, to be Biſhop of that Place (to whom we had firſt given our Royal Aſſent) as by the Letters Patent of the ſaid Prior and Chapter thereof to us directed appears; We the Confirmation*, &c. (as above).

F And before the Statute of *Præmunire* the King might ſeize the Temporalties of the Biſhop, if he came to the ſame by Proviſion of the Pope; but now he ſhall forfeit all his Lands and Goods by the Statute of 16 *R.* 2.

(*a*) See this Certificate by Letters of the Metropolitan, with a ſpecial Concluſion, (forbidding any to ſay) the contrary. 21 *Ed.* 3. 40.

G And it appeareth by the Regiſter, if a Biſhoprick of *Ireland* be void, that they ſhall ſue to the King here in *England* to go to Election of another, and after the Election made they ought to have his Royal Aſſent to that Election, upon Certificate of the Election to the King: And thereupon a Writ ſhall be out of the Chancery here to the Chief Juſtice of *Ireland*, or his Lieutenant, rehearſing the whole Matter, commanding him to take the Biſhop's Fealty; and to reſtore to him the Temporalties; but now the Courſe in *Ireland* is to make ſuch Writs there in the King's Name, but the King doth nominate the Biſhops there, and alſo in *England*; and then the Chapter ſhall chuſe him whom the King hath nominated unto them; and thereupon the Writs are made of Courſe.

[170.] A But how and in what Manner Archbiſhops and Biſhops ſhall be elected, nominated, preſented, inveſted and conſecrated unto the Dignity of an Archbiſhoprick or Biſhoprick, ſee the Statute thereof made 25 *H.* 8. *cap.* 2.

B And the King may give Power to another to give his Aſſent to go unto the Election, and to certify the ſame Election unto him again, and thereupon to take the Fealty of the Abbot, Prior or Biſhop, and to certify the King thereof in the Chancery. And the Writ of *Dedimus poteſtatem* ſhall be ſuch:

The King to his beloved I. *of* C. *his Conſtable of his Caſtle of* A. B. *greeting: We compaſſionating the Poverty of our beloved in Chriſt the Sub-Prioreſs and Nuns of the Priory of* B. *(void by the Death of* M. *of good Memory, lately Prioreſs of that Place) to whom we have lately given leave to elect, and we being willing to ſpare their Labours and Expences, have graciouſly given to you Power to give the Royal Aſſent in our ſtead to the Election made of a future Prioreſs in the ſaid Church, or in the next to be made. And when ſuch Election by the Letters Patent of them the ſaid Sub-Prioreſs and Nuns, ſealed with the Seal of their Chapter, to us thereupon directed, ſhall be preſented unto you, to ſignify ſuch Aſſent by your Letters to the Dioceſan of the Place, that he may further execute that which concerns himſelf, and alſo to receive the Fealty of the ſame Prioreſs in our Name, if the ſaid Election ſhall happen to be canonically confirmed, and it ſhall thereupon appear to you by the Letters Patent of him the ſaid Dioceſan to us thereupon directed; And therefore we command you, that you do about the Premiſſes in Form aforeſaid, and certify us under your Seal diſtinctly and openly of the Fealty aforeſaid, when you have taken it, ſending to us as well the Letters of them the ſaid Sub-Prioreſs and Nuns, as the Letters of him the ſaid Dioceſan aboveſaid. Witneſs,* &c.

C And if the Dean and Chapter go to the Election of the Biſhop without the King's Aſſent, and certify the ſame to the King, the King may chuſe whether he will aſſent to the Election or not; and if he will give his Royal Aſſent to the ſame, then he ſhall ſend a ſpecial Writ to ſome Perſon to take Fealty of him; and the Writ in the Regiſter is ſuch:

The King to his beloved and faithful I. *his Juſtice of* Ireland, *greeting: Whereas our beloved in Chriſt the Dean and Chapter of the Church of* B. *(their ſaid Church being lately void by the Death of* Luke *of good Memory, lately Biſhop of that Place) have choſen our beloved in Chriſt* M. I. *Dean of the Church aforeſaid, for their Biſhop and Paſtor, and have beſought us by their Letters Patent, that we would vouchſafe to give the Royal Aſſent to the Election: We (although the ſame Dean and Chapter have not firſt requeſted of us Licence of electing, as the Cuſtom is) being willing, nevertheleſs, to do eſpecial Favour to them for this Time, are in-*

duced to give the Royal Aſſent to the ſaid Election, being unwilling that they ſhould be moleſted or in any wiſe aggrieved, although they did not requeſt ſuch Licence; being moreover willing to do a more profitable Favour to him the ſaid Elect, that his Labours and Expences may be ſpared, we have given you Power, that if ſuch Election happen to be canonically confirmed by the Metropolitan of the Place, and it ſhall ſo appear to you by the Letters Patent of him the ſaid Metropolitan to us thereupon directed, then you may receive in our Name the Fealty of him the ſaid Elect due to us in this Behalf, and may in our ſtead cauſe the Temporalties of that Biſhoprick to be reſtored to him, as the Cuſtom is, having firſt received from the Biſhop elect his Letters made with his Seal, &c. *and ſealed with the Seal of his Chapter, that our Favour which we have at preſent done, being of our mere Liberality, may not turn to the Damage of us or our Heirs,* &c. *Witneſs,* &c.

Licence to go to Election.

D THE Form of the King's Licence to go to Election is thus (*a*): *The King to his beloved in Chriſt the Prior and Convent of the Monaſtery of* Peterborough, *greeting: We are humbly ſupplicated on your Part, that whereas your Church aforeſaid is deſtitute of the Help of a Paſtor by the Death of* M. *of good Memory, the laſt Abbot of that Place, we would vouchſafe to grant leave to you of chuſing for yourſelves another for Abbot and Paſtor of the ſame Houſe; We being favourably inclined to your Prayers in this Behalf, have thought fit to grant unto you that Licence, commanding you that you chuſe ſuch a one for Abbot and Paſtor, who is devoted to God, neceſſary for your Church aforeſaid, and profitable and faithful to us and our Kingdom. In Witneſs whereof,* &c.

E And when they have made their Election, they ought to ſue a Writ to have the King's Royal Aſſent to that Election, and that Aſſent ſhall be made by Writ directed to the Biſhop of the Dioceſe, and ſhall be ſuch:

The King to the venerable Father in Chriſt P. *by the ſame Grace Biſhop of* Lincoln, *greeting: Know ye, that we have given the Royal Aſſent and Favour to the Election lately made in the Conventual Church of the Monaſtery of* B. *of your Dioceſe (void by the Death of* W. *of good Memory, the laſt Abbot of that Place) of* M. *Sub-Prior of the ſame Houſe;* or *of Friar* B. *a Monk of the ſame Houſe, to be the Abbot of that Place; and this we ſignify to you by the Tenor of theſe Preſents, that you may execute that which to you belongeth in this Behalf.*

(*b*) And the Abbot, when he is made Abbot, may ſue Letters Patent, directed to his Tenant, reciting how he is made Abbot, and how the King hath reſtored to him the Temporalties, commanding them that they be attendant upon him as their Lord.

(*a*) See *Rot. Pat.* 1 *Ed.* 1. *m.* 4. *Electio caſſata eo quod Licentia Regis non fuit requiſita, & de concilio Regis Epiſcopus Dunelm' præfecit Abbatem loci Diœceſan'.* And *note;* this was in *Ireland.*

(*b*) *Note;* The King may at this Day create a Biſhop *per Annulu' & Baculu'*, or by Letters Patent. *Mich.* 13 *Jac.* 1. *B. R. Rot.* 155 or 151. adjudged.

Writ of Decies tantum.

[171.]
21 H. 6. 52.
5 Ed 4. 2.

THE Writ of *Decies tantum* lieth, where any of the Jury who is ſworn, taketh of the one Party, or of the other, or of both, to give their Verdict, &c. Then he who will may ſue this Writ, for it is an Action popular. And the Writ of *Decies tantum* lieth againſt all the Jurors, although they ſeverally take Sums of Money, as ſome more, ſome leſs. A

Therefore the Releaſe of the Party is not good againſt the King. 40 Ed. 3. 33. 44 Ed. 3. 36. 36 H. 6. pl. 1. and fol. 28.

Co. Lit. 369. a.
17 Ed. 4. 5.

And *Decies tantum* lieth againſt an Embraceor, if he take Money, as well as againſt a Juror, otherwiſe not.

One Juror may pray his Companions to paſs with the one, or the other, becauſe he is perſuaded in Conſcience with him.

Co. Lit. 369. a.
6 Ed. 4. 5.
13 H. 4. 16. accordant for Attornies.

(*a*) And an Embraceor is he who cometh to the Bar with the Party, and talketh in the Cauſe, or ſtandeth there to Survey the Jury, or to put them in Fear: but the Lawyers may plead in the Cauſe for their Fees, but they cannot labour the Jury, and if they take Monies ſo to do, they are Embraceors. B

37 H. 6. 31. acc. per Cur'.
22 H. 6. 5.

And the *Decies tantum* doth not lie againſt the Embraceor, if he embrace and take no Money; for he ought to take Money, and alſo embrace, if the Action be maintained. C

27 H. 6. 3.
21 H. 6. 20.
1 Ma. Dyer 95.

And *Decies tantum* lieth againſt the Jurors, although they do not give a Verdict, if they take Money; and ſo if they give a true Verdict, a *Decies tantum* lieth if they take Money.

29 H. 6. 54.
41 Ed. 3. 5.
40 Ed. 3. 33.
41 Ed. 3. 9.

And a *Decies tantum* may be ſued againſt the Jurors and Embraceors, and it may be ſued againſt the Juſtices of *Niſi Prius* by Bill, and it may be adjourned from them *in Banco*. And the Form of the Writ is ſuch: D E

The King to his Juſtices of the Bench, greeting: Whereas in our Statute at Weſtminſter, *ſet forth in the fifth Year of our Reign, it is (amongſt other Things) ordained and appointed, that if any Juror in Aſſiſes, Juries or Inqueſts, take of the one Party or the other, and of this be duly convicted, that from thenceforth he ſhall not be put in Aſſiſes, Juries or Inqueſts; and nevertheleſs he ſhall be committed to Priſon, and further ranſomed at our Will; and* S. *and* W. *lately put in a certain Inqueſt between* A. *Demandant, and* R. *Tenant of one Meſſuage with the Appurtenances in* N. *to be taken before you in the Bench aforeſaid, took* (*b*) *as well of the ſaid* A. *as of the ſaid* R. *againſt the Form of the ſaid Statute, as we have received Information: We willing that Statute to be inviolably obſerved, command you, that having called before you the ſaid* W. *and* S. *if it may appear to you, that they were put in the Inqueſt aforeſaid, and have taken as well of the ſaid* A.

Certain Jurors took Money of the Party after their Verdict, without any Covenant made before, viz. each a Mark, and were thereof convict by Verdict, and fined each a Mark; ſo note, that is out of the Statute, and there was no committing him to Priſon, 39 Aſſ. 19. Brion. Decies tantum 15. 8 H. 6. 9 & 10. Not guilty is no Plea in Decies tantum: But he ought to ſay, that he took no Money, 6 Ed. 4. 5. For in a Writ of Maintenance he muſt ſay, he did not maintain.

(*a*) If an Attorney promiſes or gives any Thing to the Jury, it is Maintenance, and puniſhable; but a *Decies tantum* does not lie againſt the Jurors for ſuch Taking. 13 *H.* 4. 15.

(*b*) *Ad grave Damnum & noſtri Contemptum,* without ſaying *ad grave Damnum* of the Plaintiff, becauſe it is an Action popular. 21 *H.* 6. 54. *vide infra* H.

as of the aforeſaid R. *then having inſpected the Statute aforeſaid, you further do thereupon, that which ought of Right, and according to the Statute aforeſaid, ought to be done. Witneſs*, &c.

F And upon this Writ the Juſtices ſhall make Proceſs for the King againſt the Party, which Writ ſhall be a *Pone* (as it ſeems) to attach him to appear, and to anſwer the King for the ſame; and there is another Form of Writ for the Party thus:

G *The King to the Sheriff*, &c. *If* W. H. *ſhall make you ſecure, then put*, &c. I. S. I. F. *and* W. K. *&c. that they be before us from the Day of Saint* Michael *in three Weeks, whereſoever we ſhall then be in* England, *as well to anſwer us as the aforeſaid* W. H. *wherefore, whereas in the Parliament of Lord* Edward *lately King of* England, *&c. held at* Weſtminſter *in the thirty-eighth Year of his Reign, amongſt other Things it is agreed, That if any Jurors in Aſſiſes, Juries and other Inqueſts to be taken between us and the Party, or Party and Party, do any thing take by themſelves or others, of the Party, Plaintiff or Defendant, to give their Verdict, and upon this be convicted by Proceſs in a certain Article touching Jurors, made and ordained in the thirty-fourth Year of the Reign of our ſaid Grandfather, whether it be at the Suit of the Party, who for himſelf, or for us, or any other Perſon, will proſecute, every one of the Jurors aforeſaid ſhall pay ten Times as much as he hath received, and he who makes the Suit ſhall have one Moiety, and we the other Moiety; and that all Embraceors bringing or procuring ſuch Inqueſts in the Country for Gain or Profit to be taken, ſhall be puniſhed in the ſame Manner and Form as the Jurors; and if a Juror or Embraceor ſo convicted have not whereof he can make Satisfaction in Form aforeſaid, he ſhall be impriſoned for one Year, as in that Ordinance is more fully contained; the aforeſaid* I. S. I. F. *and* W. K. *Jurors put in a certain Inqueſt which was lately ſummoned and taken before the Juſtices of Lord* Richard *the Second, lately King of* England *after the Conqueſt, of the Bench at* Weſtminſter, *by the Writ of him the ſaid late King, of Record between* R. F. *and the aforeſaid* W. H. *of the Beaſts of him the ſaid* R. *taken and unjuſtly detained, as it was ſaid, for giving their Verdict in this Behalf, and the aforeſaid* W. D. *and* L. I. *Embraceors of the ſame Jury, to bring and* H *procure the ſame, took of the aforeſaid* R. *divers Sums of Money and other Gifts, at the City of* Weſtminſter, *in Contempt of us, and to the great Damage of him the ſaid* W. H. *and againſt the Form of the Ordinance aforeſaid: And have there the Names of the Pledges and this Writ.* An Ambidexter is that Juror or Embraceor, who taketh of one Part and the other, to reſtore ten Times as much, *&c.* See Statute of 27 *Ed.* 3. *c.* 3. 33 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *c.* 12.

38 Aſſ. 9.

21 H. 6. 54. Exception was taken for want of the Words, *grave Damnum, &c.* and diſallowed, being a popular Action.

41 Ed. 3. Decies tantum 12.

Writ

Writ of Champerty.

[172.] 47 Ed. 3. 9. A THE Writ of *Champerty* lieth, where a Man by Covenant or Agreement made by Writings or by Word, agreeth to have Parcel of the Thing or Land, or Debt which is in Suit, that ſhall be recovered, if he do recover, to maintain and aid him in the Action, and in the Manner for which he ſueth. (*a*) Then he who is grieved ſhall have this Action againſt him who maintaineth the Suit for the ſame Intent; and the Writ is ſuch:

The King to his Juſtices of the Bench, greeting: Whereas amongſt other Articles which Lord Edward *lately King of* England, *&c. granted for the Amendment of the State of his People, it is ordained, that none of his Miniſters, nor any other Perſon, for Part of the Thing which is to be had in the Plea, ſhall take upon himſelf to maintain the Buſineſſes which are in the Plea; nor ſhall any Perſon upon any ſuch Covenant give up his Right to another. And* L. *hath now taken upon himſelf to maintain* (*b*) *the Plea of the Plaint which is before you, by our Writ between* A. *Demandant, and* B. *Tenant, of one Meſſuage with the Appurtenances in* I. *for having Part of the ſame, againſt the Form of the Ordinance aforeſaid, as we have received Information: We willing that Ordinance to be inviolably obſerved, command you, that you having inſpected the Tenor of the Ordinance aforeſaid, further cauſe to be done thereupon, that which of Right, and according to the Form of the Ordinance aforeſaid, ought to be done. Witneſs,* &c.

B (*c*) And upon that the Juſtices ſhall award an Attachment againſt the Party out of the Common Pleas, *&c.* returnable at a certain Day.

C And this Suit ſhall be ſaid the King's Suit; but yet the Party may ſue an original Writ out of the Chancery againſt him, who purchaſeth Parcel of the Land depending the Plea, *&c.* And the Statute which giveth the Action, is the Statute of *Articuli ſuper Chartas, cap.* 11. (*d*) which willeth that no Miniſter or other for Part of the Things which are in Plea, take upon him any Matter which is in Suit; nor none upon any ſuch Covenant ſhall give up his Right; and if any do ſo, and be attainted thereof, then ſhall be forfeit unto the King ſo much of his Lands and Goods of the Taker, as doth amount unto the Value of the Part he hath purchaſed by ſuch Taking upon him.

30 Aſſ. 5. Br. Champ. 7. And by thoſe Words it ſeemeth that he, who loſeth his Land pendent the Suit, or giveth Parcel thereof pendent the Plea, to the Intent aforeſaid, ſhall be puniſhed as well as he who is the Purchaſor. 30 *Aſſ.* 15. *cont. F. Champerty* 5. *cont.*

Br. Champ. 7. Fitz. 11. D *Anno* 30 *Ed.* 3. *Lib. Aſſ.* It is no Plea to ſay he did not purchaſe pendent the Plea; by which it ſeemeth if he purchaſe before the Writ ſued to main-

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(*a*) See 12 *Ed.* 3. *Champerty* 9. Where the King ſued a Writ of Champerty, *&c.*

(*b*) Without alledging that the Party had maintained in the Writ, for that the Writ is *ad dampnum*; *Note,* The Juſtices may amend a Writ directed to them, but not a Writ directed to the Sheriff. 22 *H.* 6. 7.

(*c*) *Note*; Proceſs of Outlawry is in Maintenance, but not in a Writ of Conſpiracy. 22 *H.* 6. 7.

(*d*) See 20 *H.* 6. 30. It is doubted if the Writ lies in this Caſe; for it is not warranted by any Statute.

tain, *&c.* that he ſhall be puniſhed, *&c.* by the Statute; *tamen quære.* For 19 *R.* 2. *Champerty* 15. it is holden by all the Court, that if a Man bargain for any Lands by Deed, and afterwards an Action is brought for the ſame Land, and afterwards pendent the Plea he maketh Eſtate to him, to whom he made the Bargain, that it is not Champerty.

Fitz. Champ. 15. 9 H. 7. 18. ac. Plow. Com. 465. acc.

E A Surrender made by him in the Reverſion pendent the Plea is not Champerty.

17 Ed. 2. Champ. 14.

F And if a Man purchaſe Land *bona fide* pendent the Writ, and not to maintain, it is not Champerty. 21 *Ed.* 3. 10, 52. 50 *Aſſ.* 3. 17 *Ed.* 2. *Champerty* 6, 14.

50 Aſſ. 3. Br. Champ. 8. 22 Ed. 3. 10. Br. Champ. 4.

G And a Diſſeiſor in an Aſſiſe ſhall have a Writ of *Champerty*, if the Diſſeiſee grant Part of the Land by Covenant to maintain, *&c.* 32 *Ed.* 3. *Champerty* 6. *contra* 14 *H.* 6. 7. 1 *Inſt.* 21. 4 *Ed.* 3. *Champerty.* 7 *Ed.* 4. 12. *Litt.* 4. *cont.* 6 *Ed.* 3. 33. *Nat. Br.* 180.

47 Ed. 3. 9. 6 Ed. 3. 3. Fitz. Champ. 10.

H And a Man may give to his Son in Frank-marriage, or for Life, and it ſhall not be ſaid Champerty, for the Statute in the End thereof is in ſuch Manner. But that is not to be intended, that a Man may not give Counſel Fees for their Pleading. *Dyer* 301, 274. *Bro. Champerty per tot.* 17 *Ed.* 2. *Champerty* 14. *Nat. Br.* 180. B.

I And in a Writ of *Champerty*, 17 *Ed.* 2. where the Writ did abate for falſe *Latin*; the Defendant was put to anſwer the King's Suit for the ſame Matter.

K And if a Man grant a Rent out of the Land, pendent the Suit for the Land, the ſame is Champerty, although that that Rent is not as a Demand, *&c.*

L And Champerty lieth as well upon Covenant made by Word, *&c.* as if it were made in Writing to have Parcel of the Thing, *&c.*

Ant. 171. 30 Aſſ. 15.

M And if the Covenant be to have a Rent out of the Land of another which is not in Suit, it is not Champerty. But if he do maintain, *&c.* he ſhall have a Writ of *Maintenance* againſt him for the ſame, but not a Writ of *Champerty.*

N And if the Officers of the Court do maintain any Plea pleaded in their Court to have Part of the ſame, or other Profit by the Recovery in that Action, the Party grieved ſhall have ſuch a Writ:

The King to the Sheriff, &c. *If* R. *and* M. *his Wife ſhall make you ſecure,* &c. *then put,* &c. I. *and* W. *Bailiffs of our City of* Wincheſter, W. *and* W. *that they be before our Juſtices,* &c. *to ſhew wherefore, whereas by the Common Council of our Realm it is provided, that none of our Miniſters, or any other, ſhall maintain Pleas, Plaints, or* (a) *Buſineſſes which are in our Courts or elſewhere, of*

(a) *Note*; if one gives Money to another to purchaſe an Appeal, this is not Maintenance; *contra* 1 *R.* 2. *c.* 4. if he gives it after the Appeal purchaſed, *per Markham*, 3 *H.* 6. 34. and one cannot maintain another, except there be ſome Relation between them; and therefore in ſuch Caſe the Grantor or the Grantee may ſhew and produce Evidences, *&c.* where the Grantee is impleaded, though no Voucher or Warranty of Charters be ſued againſt him: So a Servant or Couſin to the Tenant may maintain generally, 11 *H.* 6. 41. and in an Appeal by a Servant the Maſter may retain Counſel, pay Fees, *&c.* with his own proper Goods, *&c.* and ſo may the Son for the Father: So giving of Money, *&c.* to a poor Man by Way of Alms, *&c.* is no Maintenance; yet to ſtand with a Stranger at the Bar is Maintenance. 21 *H.* 6. 16. So it is for a Stranger to ſhew to the Jury the Truth of the Matter, or to ſay that he will ſpend twenty Shillings for *J. S.* though he does not give any Money to labour the Jury; yet it is Maintenance, though he does not labour the Jury. See 22 *H.* 6. 5.

Lands and Tenements, or other Things whatſoever, for having Part of the Thing demanded, or other Profit, by Agreement made thereupon, nor ſhall any one upon any ſuch Covenant give up his Right to another, the aforeſaid I. *and* W. W. *and* W. *a certain Plea of freſh Force, which is before the Mayor and the ſaid Bailiffs of the City aforeſaid, between* S. *and* A. *his Wife Demandants, and the aforeſaid* R. *and* M. *Tenants, of one Meſſuage with the Appurtenances in the City aforeſaid, for to have Part of the Tenement aforeſaid, and other Profits thereof, have now taken upon themſelves for the aforeſaid* S. *and* A. *to maintain, and do maintain, to* (*a*) *the great Damage of them the ſaid* R. *and* M. *and againſt the Form of the Statute aforeſaid: And have*, &c.

Writ upon the Statute, That none be Victualler for the Time that he is Mayor, or Sheriff, or Head-Officer of a Town or Borough.

N*OTE*, That by the Statute of *York*, no Victualler ſhall uſe the Occupation O to ſell Victual or Wine in Groſs or by Retail, ſo long as he is in Office in any Town, Borough or City, to keep the Aſſiſe of Bread and Wine, upon Forfeiture, *&c.* If a Man who is a Victualler be choſen to be Mayor, [173.] Sheriff, or other Officer of a Town, Borough or City, who by Reaſon of his Office is to keep the Aſſiſe; by the Statute of 3 *H.* 8. *cap.* 8. it is ordained, That two diſcreet Perſons of the ſame Town, *&c.* who are not Victuallers, be choſen and ſworn to aſſiſe the Aſſiſe of Bread, Wine, and Victual, during the Time that he is in his Office, and then, after the Price aſſeſſed of Wine and Victual, for the Time, it ſhall be lawful for him who is choſen Mayor or Sheriff, to ſell Wine and Victual for the Time that he is Officer. But that A Statute doth not extend to *London*, *York*, or *Coventry*, to ſell or retail Wine or Victual, but in Groſs they may. And by the Statute of 6 *R.* 2. *cap.* 9. That Victuallers be not choſen to the Office of Judge in Towns or Cities, but for Want of others, then he ſhall not ſell Victuals upon a Pain of Forfeiture.

But it appeareth by the Statute of 3 *H.* 8. what Things he may do.

And if any Man in *London*, *York*, or *Coventry*, or other Place, offend againſt B thoſe Statutes, then he who is grieved may ſue a Writ directed to the Juſtices of Aſſiſe, commanding them to ſend for the Parties, and to do Right, *&c.* Or the Party grieved may have an Attachment againſt the Officer, Mayor, Sheriff or Bailiff, who offend contrary to the Statute, to appear before the Juſtices in the King's Bench, or before the King in the Common Pleas, to anſwer the Matter. And the Form of the Writ unto the Juſtices of Aſſiſe is ſuch:

(*a*) *Note*; If he ſhews any Maintenance, it ſhall be ſaid to be Maintenance pending the whole Plea, although it be only a tranſient *Act*. 22 *H.* 6. 6. *per Cur'.*

The King to his beloved and faithful A. *and* B. *Juſtices aſſigned to take the Aſſiſes in ſuch a County: Whereas for the common Profit of the People of our Realm it is appointed, that no Officer in Cities or in Boroughs, who by reaſon of his Office ought to keep Aſſiſes of Wines or of Victuals, ſo long as he is attendant to that Office, ſhall merchandize for Wines nor for Victuals in Groſs nor by Retail. And now* R. *of* B. *hath given us to underſtand, that* S. *and* M. *Bailiffs of the Town aforeſaid, and certain other Bailiffs in the ſaid Town of* S. *who by reaſon of their Office ought to keep ſuch Aſſiſe in the ſaid Town, ſell Wines and Victuals in Groſs and by Retail, againſt the Form of the Statute aforeſaid; We, if it be ſo, willing to apply a Remedy in this Behalf, command you, that having heard the Complaint of the aforeſaid* R. *and having called the Parties before you, and heard their Reaſons ſeverally thereupon, and having inſpected the Tenor of the Statute aforeſaid, you cauſe to be done to him the ſaid* R. *as well for us as for himſelf, due Juſtice hereupon, as ought to be done, according to the Statute aforeſaid. Witneſs*, &c.

And if the Action be brought upon the Statute of *York*, then he who ſueth the Action ſhall have the third Part, and the King ſhall have the Reſidue of the Victuals which is forfeited. And alſo the Form of the Writ of Attachment is ſuch:

The King to the Sheriff of Yorkſhire, *greeting: Put*, &c. P. T. *of* Richmond, *lately Bailiff of the Town of* Richmond, *that he be before us*, &c. *to ſhew wherefore, whereas for the common Profit of our Realm of* England *it is agreed by the Common Council of the ſame Realm, that no Officer*, &c. *by Retail, under the Forfeiture of the ſame, the aforeſaid* P. *while he was Bailiff of the ſaid Town of* Richmond, *oftentimes merchandized in Wines and divers other Victuals, to the Value of one hundred Pounds, in the aforeſaid Town of* Richmond, *as well in Groſs as in Retails, and there ſold them, as it is ſaid, in manifeſt Contempt of us, and to the great Damage of our People, and againſt the Form of the Ordinance aforeſaid: And have*, &c. *Witneſs*, &c.

Writ upon the Statute of Articuli Cleri, *that he do not diſtrain in the Glebe of Parſons; nor in the King's Highway.*

E THE Writ that no Diſtreſs be taken in the Glebe Land of the Parſon by the Sheriff or other Officer, is grounded upon the Statute of *Articuli Cleri*, *cap.* 6. By which Statute it appeareth, that the Sheriff nor other Officer ſhall (*a*) not diſtrain in the King's-Highway, nor in the Glebes of ancient Times

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(*a*) See where a Bailiff by Warranty on a Commiſſion out of the Exchequer to levy a Sum certain on the Dean and Chapter of *C.* on a Tax granted to the King, diſtrained in Parcel of the Parſonage of the Church of *K.* which was a Sanctuary, and the Dean and Chapter brought a general Writ of Treſpaſs; and for that he took it by Virtue of a Commiſſion and Grant, though nothing had been due; yet he ſhall not be ſaid to come *vi & armis & contra pacem*; and therefore the Plaintiff ought to have aided himſelf by a ſpecial Writ, or at leaſt by a Replevin;

Times given to Rectories, and if any Sheriff or other Perſon do contrary, then he who is diſtrained may ſue this Writ.

See Marlebr. cap. 55. V. 17 Ed. 5. 43. Fitz. Reſcous 14. the Party may reſcous.

And if a Lay Perſon be diſtrained in the King's Highway, *&c.* he ſhall F have an Action upon the Statute of *Marlebridge*. But a ſpiritual Perſon ſhall have his Action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may diſtrain in the Highway. And after the Writ delivered to the Sheriff, if he be diſtrained again, he ſhall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in itſelf a Prohibition to the Sheriff; and the Writ is ſuch:

The King to the Sheriff, &c. *greeting: Whereas in the Articles of the Prelates and Clergy of our Realm granted by Lord* Edward *lately King of* England, *our Grandfather, with the Aſſent of the Nobles and great Men of our Realm, that Diſtreſſes ſhall not be made upon Rectors by the Sheriff, or others our Miniſters, in the King's Highway, or in the Fees wherewith Churches in Times paſt have been endowed; and now, from the grievous Complaint of our beloved in Chriſt the Abbot of* Vale Royal, *Parſon of the Church of* K. *we underſtand that you, by Colour of your Office, have lately entred the Lands and Tenements which are of the Dowry and Fee of the ſame Church at* K. *and have grievouſly diſtrained the aforeſaid Abbot in the Lands and Tenements aforeſaid, and do not deſiſt to diſtrain thereupon, to the Prejudice of him the ſaid Abbot, and to the manifeſt Hurt of Eccleſiaſtical Liberty, and againſt the Form of the Articles aforeſaid: We willing to keep the Eccleſiaſtical Liberties unhurt command you, that you in no wiſe make* [174.] *any Diſtreſſes in the Lands and Tenements which are of the Dowry of the Church aforeſaid, nor attempt any thing that may tend to the Hurt or Weakening of Eccleſiaſtical Liberty, and the Diſtreſs (if any you ſhall have made) upon the ſaid Abbot in the Fee of his Church aforeſaid, as before is ſaid, without Delay you ſhall releaſe to him*, &c. *Witneſs*, &c.

And it ſeemeth, that the Party who is diſtrained in the King's Highway, A or the Parſon in the Glebe of his Church, ſhall have an Attachment againſt the Sheriff, or other who diſtrained, although they never ſued out before this Writ of Prohibition to the Sheriff; becauſe that the Statute is a Prohibition itſelf to the Sheriff, *&c.*

And by the Statute of *Articuli ſuper Chartas*, *cap.* 12. the Sheriff ought B not to make exceſſive Diſtreſs for the King's Debt, nor diſtrain the Plough-Cattle, if he can find others. And if the Party will find Sureties to the Sheriff to pay the King's Debt before the Day of the Return of the Writ, the Sheriff ought to deliver back the Cattle. And if the Sheriff do otherwiſe than is expreſſed in the ſaid Statute, the Party upon that Statute ſhall have Attachment againſt him, or he may ſue forth a Writ to inhibit the Sheriff, that he do not diſtrain contrary to the Form of the Statute; and the Writ is ſuch:

plevin; and the Plaintiff took nothing by his Writ, 26 *Ed.* 3. 70. and ſo note the Liberty of the Church is not exempted from temporal Juriſdiction. See in the like Caſe, where in Treſpaſs *contra pacem*, for diſtraining in a Sanctuary, the Defendant juſtifies as the King's Bailiff for Iſſues loſt by the Prior, and that a Precept from Sheriff came to the Plaintiff, commanding him to levy it, *&c.* and that he entred, *&c.* for that he could not find any Diſtreſs elſewhere, *&c.* and the Writ was abated for that Cauſe, *i. e.* it not being *contra pacem.* 28 *Ed.* 3. 97.

The King to the Sheriff of Derbyſhire, *greeting: Whereas amongſt other Articles which Lord* Edward *of famous Memory, ſome time King of* England, *our Grandfather, ordained for the Amendment of the State of the People of his Realm, it is contained, that too great Diſtreſſes ſhall not be taken for our Debts, and that if the Debtor can find ſufficient Security for the Debt, until a Day before the Day limited to the Sheriff, that ſuch Diſtreſs ſhall be releaſed in the mean time; We command you, that if* I. *of* W. *ſhall find you ſufficient Security to anſwer us at your next Profer for one hundred Shillings, by which he made Fine with us before our Juſtices of the Bench, for Licence of Concord in a Writ of Covenant, and which you require of him by Summons of our Exchequer, as it is ſaid, then the Diſtreſs which you make upon him upon the Occaſion aforeſaid, in the mean time ſuperſede by the Security abovementioned: And have you there this Writ. Witneſs*, &c.

And there is another Form of Writ in ſuch Caſe, thus:

The King to the Sheriff, &c. *That too great Diſtreſs ſhall not be taken for our Debt, nor driven too far; and if the Debtor can find ſufficient and competent Security for the Debt until a Day before the Sheriff's Day, within which Time the Debtor may be able to acquire to himſelf Relief thereupon, or otherwiſe ſatisfy the Debt, that ſuch Diſtreſs ſhall be releaſed in the mean time; We command you, that if* I. *of* T. *whom you diſtrain, by virtue of a Summons of our Exchequer to you directed, for eight Shillings to be paid to us of his Iſſues, forfeited before us and elſewhere before our Juſtices, as it is ſaid, ſhall find you ſufficient Security, according to the Articles aforeſaid, for the ſaid Debt until a Day before your Day, at which you are bound to account thereof, then in the mean time releaſe the Diſtreſs (if you ſhall have cauſed any to be made upon him the ſaid* I. *by reaſon of the Premiſſes) for the Security abovementioned. Witneſs*, &c.

Writ for to ſeize the Land of the Wife which ſhe holdeth in Dower, who marrieth herſelf without Licence.

C NOTE, That if the Tenant holdeth of the King *in Capite*, and dieth, *&c.* his Wife ought not to marry herſelf again without the Licence of the King; and if ſhe doth, then the King may ſeize thoſe Lands which ſhe holdeth in Dower, until ſhe have paid a Fine to the King, which is commonly one Year's Value of the Land which ſhe holdeth in Dower; and that is by the Statute of *Prærog. Regis*, *c.* 3. But it appears by the Regiſter, that the King ought to ſeize as well the Land of the Huſband, as the Land of the Wife which ſhe holdeth in Dower.

See after 263, 264, 265.

And by the ſame Reaſon, if the Wife have other Lands of her own Inheritance, beſides the Land which ſhe holdeth in Dower; that the King may ſeize that Land alſo; and the Writ in the Regiſter for to ſeize the Land, is ſuch:

Stamf. 9, 19. It is not Law.

The King to his Eſcheator, &c. *Becauſe* Margaret, *who was the Wife of* Edward *Baron* Stafford *deceaſed, who held of us in Chief, hath married herſelf to* Thomas *of* P. *without the Licence of us, or of our beloved and faithful* Ralph

Baſſet, *to whom we granted that which belonged to us of the Marriage aforeſaid, as we have received Information by the Complaint of him the ſaid* Ralph; *We command you, if ſo it is, that then without Delay you ſeize into our Hand all the Lands and Tenements, as well of him the ſaid* Thomas *as of the aforeſaid* M. *in your Bailiwick, and cauſe them to be kept ſafely, until you ſhall have other Matter in Commands thereupon from us. Witneſs*, &c.

And it appeareth by that Writ, that the King may grant the Marriages of his Widows, as well as of his Wards; and that the Woman may agree with him to whom the Marriage is granted, and by his Aſſent or Licence if ſhe marry, it ſeemeth ſhe ſhall not pay a Fine. And if ſhe marrieth without Licence, then he who marrieth her doth the King or his Grantee Wrong; and that Wrong ſeemeth to be the Cauſe, that the King ſhall ſeize the Land of him who marrieth the King's Widow without Licence. D

But now by the Statute of 23 H. 8. c. 46. the Compoſition is given to the Maſter of the Wards with three of the Counſel of that Court: So they may tax a reaſonable Fine at their Diſcretion, according to the Statute of Prærogativa Regis. Stamf. 19. acc.

[175.] And it appeareth by the Regiſter, That the ſaid *Thomas P.* may agree with the ſaid *Ralph Baſſet*, for which the King ſhall receive his Seizure; as appeareth *Rotulo Clerum Anno* 8 *Ed.* 2. But yet I conceive, that the King ought to ſeize but only the Lands which the Woman holdeth in Dower, becauſe the Statute giveth no more, but that he ſhall ſeize that which ſhe holdeth in Dower; for if ſhe will not claim nor ſue for Dower, it ſeemeth ſhe ſhall not be fined, nor none of her Land ſeized: And alſo I conceive, that the King cannot grant the Marriage of his Widows as he may do of his Wards; for if ſhe will live ſingle and not marry, ſhe may ſo do, and ſhall not pay any Fine. *Ideo quære.*

Bro. Fines 63. cont. If ſhe gets Dower at the Hands of the Heir, or of the Committee without Oath, quære, whether ſhe may marry without Licence. Stamf. 19. No, becauſe preſently upon the Aſſignment ſhe is a Tenant to the King, and not to the Heir.

Stamf. Prærog. 18. 40 Aſſ. 36. The King's Widow had Dower without Aſſignment. Vide Stamf. 18. 35 H. 6. 52.

Writ upon the Statute de Anno Primo Ed. 3. c. 12 & 13. *Where the King's Tenant alieneth without Licence.*

Br. Tenure 34. 45 Ed. 3. 6.

NOTE; Where the King's Tenant who holdeth of the King in Chief, as of his Crown, alieneth the Land which he ſo holdeth of him (*a*) for Life, or in Tail, or in Fee, without the King's Licence, then the King ought for to ſeize the Land for a Fine, *&c.* But if a Man holdeth of the King, as of any Honour, or Caſtle, or Manor being in his Hands, which he hath by Deſcent from any collateral Anceſtor, and the Tenant doth alien, as above, his Lands without Licence granted him by the King; then if the Sheriff or Eſcheator will diſtrain or diſturb the Poſſeſſion of the Alienee, he ſhall have a Writ upon the Statute of 1 *Ed.* 3. *cap.* 13. which ſhall be ſuch: A

(*a*) See *contra* 24 *Ed.* 3. 71. but 45 *Ed.* 3. 6. accords; yet ſee here *infra*, that on an Alienation for Life or in Tail, a *contra Formam Collationis* does not lie.

The King to his Eſcheator beyond Trent; or, *To his Eſcheator in the County of* S. *greeting: Whereas it is appointed by the Common Council of our Realm, that no Man be grieved by reaſon of purchaſing of Lands and Tenements which are held of us as of Honours, (the Licence of our Progenitors formerly Kings of* England, Br.Tenure 33. *or of us for this Purpoſe not being obtained); We command you, that you do not diſturb* R. *the Son of* I. *of* C. *Chaplain, by reaſon of the Purchaſe which he made in the Time of Lord* Edward *lately King of* England, *of* Robert *of* Samby, *Knt. of one Oxgang of Land with the Appurtenances in* E. *which he holds of us in Chief as of the Honour of* T. *as it is ſaid, if ſo they hold of us, againſt the Form of the Statute abovementioned. Witneſs,* &c.

And upon that he ſhall ſue an *Alias* and *Pluries, vel Cauſam nobis ſignifices, &c.* And thereupon an Attachment againſt the Eſcheator or Sheriff, if they diſtrain or diſturb him after that Writ directed unto them, if the Lands be holden as above is ſaid. But it appeareth by that Writ, that a Man may Br.Tenure 32. hold of the King *in Capite,* as of an Honour, but the ſame is againſt the Re- Stamf. 29. giſter in the Beginning of the Regiſter; as appeareth by the *Præcipe in Capite:* But the Uſe at this Day is to take a Fine of him who holdeth of the King of any Honour, which is the ancient Inheritance of the King, who alieneth his Land without Licence: But *quære* what in Right ought to be done in that Caſe.

Writ quod Clerici non eligantur in Officio Ballivi, &c. pro Terris ſuis.

B IF a Man, who holdeth certain Lands or Tenements, by reaſon of his ſaid Lands ought to be choſen Bailiff, or Beadle, or Reeve, or in ſuch like Office for his Lands; if ſuch a Man be made a Clerk, or is within Holy Orders, then he ought not to be choſen into ſuch Office for his Lands. And if he be elected to ſuch Office of Bailiff or Beadle, *&c.* he ſhall have a Writ to diſcharge him, which ſhall be ſuch:

The King to the Bailiffs of I. *of* L. *greeting: Whereas according to the Law and Cuſtom of our Realm of* England *Clerks ordained in Holy Orders ought not to be choſen to the Office of Bailiff or Bedel, nor have hitherto been accuſtomed; and now we have received Information on the Behalf of* F. *of* M. *Maſter of our Hoſpital of* C. *Chaplain, that you have now of late choſen him the ſaid Maſter to the Office of Bailiff or Bedel of the Manor aforeſaid, and endeavour to compel him to take upon him that Office, to the great Damage of him the ſaid Maſter, and againſt the Law and Cuſtom aboveſaid; whereupon he hath beſought a Remedy to be provided for him by us, and becauſe it is not conſonant to Right, that the ſaid Maſter (who continually ſerveth us in the ſaid Hoſpital for our ſafe Eſtate, and for the Souls of our Anceſtors ſome time Kings of* England, *and for the Eſtate of the ſaid Hoſpital, and in ſinging Maſſes, in Alms, and other pious Works to be maintained and ſuſtained in the ſaid Hoſpital) ſhould be compelled to ſtay elſewhere out of the ſame Hoſpital about ſecular Affairs; We command you, that you altogether ſuperſede the Diſtreſs and Compulſion (if any you ſhall have made upon him the ſaid*

Maſter

[176.] *Maſter to take upon him the Office of Bailiff or Bedel in the Manor aforeſaid, and releaſe the ſame without Delay, and that the Monies, if any, for Amercements or otherwiſe, for the Cauſe aforeſaid, you ſhall have levied upon him, you cauſe to be reſtored to the ſame Maſter without Delay, under the Peril that may fall thereon. Witneſs*, &c. And he may have an *Alias* and a *Pluries*, and Attachment upon the ſame.

Writ that Parſons nor Prebendaries ſhould not be charged for their Goods in their Poſſeſſions to Fifteenths, which are annexed to their Prebends.

Bro. Quind 124.

THE (*a*) Writ for Prebendaries or other ſpiritual Perſons to be diſcharged for their Goods of the Benefice in their Poſſeſſions lieth, where the Sheriff or Collectors of the Fifteenths will diſtrain the Parſons or Prebendaries in their ſpiritual Poſſeſſions by their Goods being in their Poſſeſſions, to be Contributories to the Payment of Taxes or Fifteenths granted, *&c.* And if they be diſtrained, they ſhall have ſuch Writ: A

The King to the Taxers of the Tenths and Fifteenths to us laſt granted by the Commonalty of our Realm of England *in the County of* Glouceſter, *greeting: It is ſhewed unto us on the Behalf of* W. *Prebendary of the Prebend of* B. *in the Church of* S. *that by reaſon of the Tenths and Fifteenths aforeſaid granted to us by the Laity, you unjuſtly intend to aſſeſs, tax and levy upon the proper Goods of him the ſaid* W. *of the Temporalties annexed to and iſſuing out of his ſaid Prebend (which are taxed to the Tenth amongſt the Spirituals in all Taxations to the Payments of ſuch Tenths, and of which Tenths have been accuſtomed to be given) the aforeſaid Tenth and Fifteenth among the Laity, to the great Damage and Grievance of him the ſaid* W. *And becauſe we will not that the ſame* W. *be charged for ſuch his Goods (of which he gives us the Tenth amongſt the Spirituals) for ſuch Tenth and Fifteenth granted to us by the Laity; We command you, that you in no wiſe moleſt or aggrieve him the ſaid* W. *in his Goods which are taxed to the Tenth amongſt the Spirituals (and of which he gives us the Tenth as is aforeſaid)*

(*a*) See a Writ in the *Regiſter* 181. that charges thoſe who are Tenants in Ancient Demeſne, and thoſe who are Burgeſſes, with Tenths, and other Towns only with Fifteenths, except the Grant were ſpecial. *Rot. Parl.* 20 *Ed.* 3. *Nu.* 24. *Note*; If *A.* leaſes to *B.* Lands for Years which lie in *C.* and *D.* *B.* ſowes the Land in *C.* and after a Fifteenth is granted, and *B.* ſevers and inns the Corn; and *B.* having Beaſts commoning in *D.* which are levant and couchant in *C.*, 1. If *B.* be taxed to the Fifteenth by his Goods, *&c.* this ſhall diſcharge *A.* ſo that he ſhall not pay the Fifteenth for the Rent. 7 *H.* 4. 33. 2. If the Corn is ſevered and inned at *D.* after the Fifteenth granted, if it be before the Tax thereof, and he is taxed for thoſe Goods after the Inning of them, the Tax is void, for they ſhall be taxed in *D.* 21 *Ed.* 3. 42. 3. *B.* ſhall not be taxed in *D.* for the Beaſts which are there commoning, if they are not levant and couchant there. 18 *Ed.* 3. 11. 4. He may be diſtrained in *C.* by the Collector of the Town of *D.* after a Tax ſo made in *D.* 2 *H.* 4. *Quind.* 3. And *Note* well; When Collectors are made of Fifteenths, they may diſtrain a Man without Aſſeſſment, by the Portion of his Goods according to the Eſtimation; and if he be eſtimated more than is reaſonable, he ſhall have a Plea to diſcharge himſelf from the Surpluſage. 20 *Ed.* 3. *Avowry* 130.

by reaſon of the Tenth and Fifteenth aforeſaid granted to us by the Laity, and the Diſtreſs, if you ſhall have cauſed any to be made upon him on that Occaſion, cauſe to be releaſed to him without Delay: Provided that he anſwer to us for ſuch Tenth and Fifteenth of the Lands and Tenements, if any were purchaſed by him the aforeſaid W. *or his Predeceſſors to the ſaid* (*a*) *Prebend, after the twentieth Year of Lord* Edward *ſome time King of* England, *our Grandfather, according to the Goods and Chattels being in the ſaid Lands and Tenements and coming forth of the ſame, as is juſt. Witneſs*, &c. And upon that he ſhall have an *Alias* and *Pluries*, and Attachment.

Writs directed to make Proclamation, that none caſt Filth or Dung into Ditches or Rivers near Cities or Boroughs, made Anno 12 R. 2. cap. 10.

B IF any one caſt any Dung, Filth or Intrails of Cattle into Ditches, Waters, or other Places which are next to any City, Borough or Town, he who will may ſue forth a Writ directed unto the Mayor, or Sheriff or Bailiff of ſuch Town, *&c.* That they make Proclamation that none ſo do, and that thoſe that have ſo done, that they cauſe to remove and carry away the ſame from thence: And this Writ is founded upon the Statute of 12 *R.* 2. *cap.* 13. and the Writ is ſuch:

The King to his Bailiffs of the Town of Newcaſtle upon Tine, *greeting: Whereas in the Statute ſet forth in our Parliament held at* Canterbury *in the twelfth Year of our Reign, it is amongſt other Things contained, That Proclamation be made as well in the City of* London *as in other Cities, Boroughs, Towns, and the Suburbs thereof, where it ſhall be needful, as well within Liberties as*

(*a*) *Note*; That in the twentieth Year of K. *Ed.* 1. all Eccleſiaſtical Benefices were taxed; and therefore according to that Rate they are charged to the King, on a Tenth granted by Convocation, (they are diſcharged of Tenths, *&c.* there) 17 *H.* 4. 33. But if an Abbot be ſeiſed of a Seigniory, 20 *Ed.* 1. and after that Time the Tenancy eſcheats, as to that it is taxable among the Laity, but the Seigniory was annexed to the Spiritualty. *Anno* 20 *Ed.* 1. *quod vide*; and ſee 29 *Ed.* 3. 20. But if an Abbot was ſeiſed at that Time, and afterwards made a Leaſe at Will, or for Life or Years, the Leſſee ſhall not pay the Fifteenth, for it is the Abbot's Land, 29 *Ed.* 3. *Quinzime* 1. alſo if the Abbot was ſeiſed of a Grange, *Anno* 20 *Ed.* 1. and afterwards Habitations are made there, and the Grange becomes a Town, they ſhall not pay to the Fifteenth, becauſe the Abbot who is Lord pays Tenths with the Clergy for the ſame Land. 11 *H.* 4. 36. *per Thirn.* See *Rot. Parl.* 15 *Ed.* 3. *Art.* 25 & 32. Poſſeſſions of Churches purchaſed and appropriated, not taxed among other Temporalties in the Tax of Tenths, but charged with Fifteenths, *&c.*

See *Rot. Parl.* 20 *Ed.* 3. *Art.* 44. Religious Men who paid Tenths among the Clerks, and only paid them 20 *Ed.* 1. diſcharged of Fifteenths, for the Poſſeſſions of which they paid Tenths, and of the Lands whereof they did not pay Tenths being charged with Fifteenths.

See 11 *H.* 4. 37. *per Thirn.* If an Abbot had a Manor, *Anno* 20 *Ed.* 1. for which he was charged with Tenths, and afterwards aliens it: Now the Alienee ſhall pay to the Fifteenth; but if it comes to the Abbot again, he ſhall not pay to the Fifteenth aſſeſſed after it ſo returned; but if the Alinee was taxed to the Fifteenth before, and it afterwards comes to the Abbot, he may diſtrain for it, otherwiſe if the Abbot comes thereto by his Reverſion. *Rot. Parl.* 1 *R.* 2. *Nu.* 102.

without, that all they which do caſt and lay Annoyances, Dung, Garbages, Intrails or other Ordure in Ditches, Rivers, Waters and other Places within, about and near the divers Cities, Boroughs and Towns of our Realm of England *and the Suburbs thereof, ſhall cauſe them wholly to be removed and carried away before the Feaſt of,* &c. *under the Penalty of twenty Pounds to be paid to us, and that the Mayors and Bailiffs of every ſuch City, Borough and Town, and alſo the Bailiffs of Liberties, ſhall compel them to do this under the like Pain; and moreover that Proclamation ſhall be made as well in the ſaid City of* London *as in other Cities, Boroughs, Towns and other Places abovenamed, that none of whatſoever Condition he be, cauſe to be caſt or put from thenceforth any ſuch Annoyance, Garbage, Dung, Intrails or any other Ordure in the Ditches, Rivers, Waters and Places aboveſaid; and if any ſhall do this, he ſhall be called before the Chancellor by Writ at his Suit that will complain thereof, and if he be found Guilty, he ſhall be puniſhed at the Diſcretion of the Chancellor, as in the Statute aforeſaid is more fully contained; and now on the Behalf of our beloved in Chriſt the Prior and Friars of the Order of Hermits of Saint* Auguſtin *of the ſaid Town of* Newcaſtle upon Tine, *we underſtand, that many Men of the ſame Town have caſt and laid Dung, Garbage, Intrails and other Ordures in a certain Way which leads near the Manſion of the aforeſaid Prior and Friars in the ſame Town, to the Nuſance of them the ſaid Prior and Friars and others converſant and paſſing there, and to the manifeſt* [177.] *Peril of the Town, and againſt the Form of the Statute aforeſaid; We willing that Statute to be inviolably obſerved command you, ſtrictly injoining that you make Proclamation in the ſaid Town on our Behalf, that none, of whatſoever Condition he ſhall be, do caſt or lay any Annoyances, Garbage, Dung, Intrails or Ordures whatſoever in the aforeſaid Way, and that all and every one who ſhall caſt or lay ſuch Annoyances there, do remove and carry away the ſame without Delay, according to the Form of the Statute aforeſaid. Witneſs,* &c.

And it ſeemeth, that the Chancellor may award a *Pone* againſt him, or an Attachment, to make him come before him in the Chancery; and there puniſh him according to his Diſcretion. And it ſeemeth, that he who is grieved by that *Nuſance* may have an Action upon the Statute againſt him who did the *Nuſance,* and recover Damages for the Nuſance done to him; *tamen quære.*

But by the Common Law, if a Man doth any Thing to the Annoyance of my Freehold, or of my Land in which I have an Eſtate for Years, I ſhall have my Action upon the Caſe for the ſame, or a Writ of *Nuſance,* if it be Annoyance unto my Freehold.

Writ of Aſſiſe of Novel Diſſeiſin.

A THE Writ of *Aſſiſe of Novel Diſſeiſin* lieth where Tenant for Life, or Tenant in Fee-ſimple, or in Tail, is diſſeiſed of his Lands or Tenements, or put out thereof againſt his Will, that is a Diſſeiſin; and he ſhall have an *Aſſiſe of Novel Diſſeiſin* of that Ouſter, *&c.*

B And the Rule in the Regiſter is, That if a Man will bring (*a*) an *Aſſiſe of Novel Diſſeiſin* of Lands in the County where the Common Pleas is; that then the Aſſiſe ſhall be brought in the Common Pleas; and if the Common Pleas be in one County, and the King's Bench in another County, if the Aſſiſe ſhall be brought of Lands in the County where the King's Bench is, then the Aſſiſe ſhall be brought and returnable in the King's Bench: And if both the Benches be in one County, the Uſage is to bring the Aſſiſe in the Common Pleas or King's Bench at Pleaſure; but that, as I think, is againſt the Rule in the Regiſter.

C And the *Aſſiſe of Mortdaunceſtor* ſhall be brought in the like Manner, as the *Aſſiſe of Novel Diſſeiſin* ſhall be, before the Juſtices of the Common Pleas or King's Bench; and in the Aſſiſe a Day certain ſhall be put, thus; *Uſque in diem Jovis poſt Quindenam, &c.* But in *Aſſiſes of Mortdaunceſtor* the common Day ſhall be *in Quindena, &c. vel in Octabis, &c.* as in other Pleas.

See before 109. acc. in Attaint. Vide 7 Aſſ. 7. Br. Aſſiſe 120.

D And in an *Aſſiſe of Novel Diſſeiſin* in the Common Pleas or in the King's Bench, the Juſtices may give Day out of Term, thus, *Uſque ad diem Jovis proxime poſt Feſtum S. Luciæ, &c.* becauſe that the Aſſiſe hath not any Day of Return in the Term, but Day certain, which the Juſtices will give, and that may as well be out of Term as in Term. And by the Statute of (*b*) *Articuli ſuper Chartas*, in every Writ of Summons and Attachment there ought to be fifteen Days betwixt the Date and the Return thereof; but in *Aſſiſe of Novel Diſſeiſin* in the Common Pleas or in the King's Bench there needeth not be fifteen Days between the Date and Return thereof, as it ſeemeth by the Statute.

30 Aſſ. 44. B. Aſſiſe 116. for their Patent ought to be dated fifteen Days before the Day.

E And in an *Aſſiſe of Novel Diſſeiſin* ſued before Juſtices in Eyre, or before Juſtices of the King's Bench or Common Pleas, the Plaintiff ought not to

22 Aſſ. 9. 29 Aſſ. 40. Br. Aſſiſe 300.

(*a*) See *Mag. Chart. c.* 12. That Recognitions of *Novel Diſſeiſins*, and *de Mortdaunceſtor* ſhall not be taken but in the proper County. A Cryer of the Common Pleas for Life, the Court then held *in Com' S.* is diſſeiſed, and brings his Aſſiſe, then the Court is removed to *Weſtminſter*; yet the Plea ſhall be continued in *C. B* and the Aſſiſe ſhall be taken by *Niſi prius* in the County of *S.* where the Diſſeiſin was. 7 *H.* 4. 45. 8 *Ed.* 4 16 19 *Aſſ.* 45. And although the Court be removed, and alſo the Office; yet the Aſſiſe ought to be brought, and the View made where the Diſſeiſin commenced, and he may well enough recover the Seiſin there. 8 *Ed.* 4. 10. 7 *Ed.* 3. 57. *Nich. Dagworth's* Caſe. See *Dyer* 250. Judgment may be given in *C. B.* on a Verdict adjourned thither for Difficulty; and ſo on a foreign Iſſue where it is found over, *&c.* if the Plaintiff will releaſe his Damages. See an Adjournment of an Aſſiſe from one County to another, without any Reſummons. *Dyer* 375. L. 5 *Ed.* 4. 134. *Caſe de Com' Salop.* 22 *H.* 6. 11.

(*b*) It ſeems that the Statute *Artic' ſuper Chart.* gives the Averment of not attached by fifteen Days. 10 *Aſſ.* 40. 12 *Aſſ.* 4. For before that Statute, Perſons ſo attached were not to have the Summons of fifteen Days. *Bract. l.* 4. *c.* 16, 182.

have any Patent to the Juſtices, for they have Authority without a Patent; and ſo have Juſtices of Aſſiſe Authority to take *Aſſiſe of Novel Diſſeiſin* without any Patent made unto them by the Statute of *Weſtm.* 2. *cap.* 13. but then the Form of the Writ is ſuch:

Which proves that the Bailiff is Party quodammodo. Vide 7 Aſſ. 12. Br. Aſſiſe 122.

The King to the Sheriff, &c. (*a*) A. *hath complained unto us, that* B. *unjuſtly and without Judgment hath diſſeiſed him of his Freehold in* C. *after the firſt* (*b*) *Paſſage of Lord King* Henry, *Son of King* J. *into* Gaſcoigne; *And therefore we command you, that if the aforeſaid* A. *ſhall make you ſecure to proſecute his Claim, then cauſe that Tenement to be re-ſeized, and the Chattels which were taken in it, and the ſame Tenement with the Chattels to be in Peace until the firſt Aſſiſe, when our Juſtices ſhall come into thoſe Parts, and in the mean time cauſe twelve free and lawful Men of that Venue to view that* (*c*) *Tenement and their Names to be put into the Writ, and ſummon them by good Summoners, that they be before the Juſtices aforeſaid at the Aſſiſe aforeſaid ready to make Recognizance thereupon, and put by Gages and* (*d*) *ſafe Pledges the aforeſaid* B. *or (if he ſhall not be found) his Bailiff, that he may be then there to hear that Recognizance*, &c. *And have there the Summoners, the Names of the Pledges, and this Writ*, &c. F

And if the Writ of Aſſiſe be brought before other Juſtices than before the Juſtices of Aſſiſe in the ſame County, then the Writ ſhall be in another Form, which is ſuch: *Rot. Parl.* 25 *Ed.* 3. *no.* 35. G

The King to the Sheriff, &c. A. *and* B. *his Wife, have complained unto us, that* C. *unjuſtly*, &c. *hath* (*e*) *diſſeiſed them*; or, *the aforeſaid* B. *of her Freehold in* N. *And therefore we command you, that if the ſaid* A. *and* B. *ſhall make you ſecure*, &c. *in Peace until a certain Day, which our beloved and faithful* R. *and* F. *ſhall make known to you, and in the mean time*, &c. *and ſummon*, &c. *that they may be then before the aforeſaid* R. *and* F. *and thoſe whom we ſhall have aſſociated unto them, at a certain Place which the ſame* R. *and* F. *ſhall make known to you, ready thereupon to make Recognizance. And put*, &c. H

(*a*) If the Writ be *Monſtravit nobis*, it ſhall abate, 11 *H.* 6. 20. and ſo if *injuſte & ſine judicio* be omitted; ſo if the Writ compriſes the Certainty of the Demand, *quære.*

(*b*) See *Weſt.* 1. *cap.* 38. Yet it ſeems though thoſe Words are not in the Writ, if it appears to the Court by the Plea, that the Diſſeiſin was after that Time, the Writ is good. *Note*; It is a good Plea to ſay, that he was not diſſeiſed after the Time of Limitation. 13 *H.* 4. 16.

(*c*) *Note*; If it appears by Examination, that the Jurors have had a View of the Tenements of their own proper Notice, without the calling them thereto by the Sheriff, *&c.* it is well enough. *Dyer* 61.

(*d*) If any Stranger finds Pledges it ſuffices, for he ſhall be intended Bailiff, 8 *H.* 4. 6. and if the Bailiff returns *attached per plegios*, it is well, though it be not ſaid, *quod Defendens non eſt inventus*, for it ſhall be intended. See 26 *Aſſ.* 33. 28 *Aſſ.* 40. and if the Defendant appears, it is ſufficient tho' he was only ſummoned by fifteen Days, and not attached by Pledges or Goods. 34 *Aſſ.* 1. and *Note*; four or more Defendants may find two Pledges in the County, 8 *H.* 4. 6. and *Ibid.* the Trial of the Attachment ſhall be by Oath of the Bailiffs; and *per Cur.* If the Defendant be returned *Nihil*, the Aſſiſe ſhall be taken by Default, without ſpeaking with the Bailiff, 7 *Aſſ.* 12. and *Nihil habet* is a good Return in Aſſiſe, without ſaying *non eſt inventus*, for he may be attached by Pledges, 11 *H.* 6. 4. and ſee there *fol.* 3. though *Nihil* be returned, yet the Aſſiſe ſhall be awarded.

(*e*) A Writ brought by Baron and Feme, was *quod diſſeiſivit eos*; where the Diſſeiſin was before the Coverture, it ſhall abate by Plea of the Tenant; but if Not guilty be pleaded, and this Matter be found by Verdict, it ſhall not abate the Writ, 14 *H.* 6. 7 *H.* 7. 24. 4 *Aſſ.* 6. 24 *Ed.* 3. 50. and yet if a Feme diſſeiſeth, and then takes Huſband, the Writ ſhall be *quod Diſſeiſiverunt.* 7 *H.* 7. 2. 4 *Ed.* 4. 17.

I And upon that Writ they ought to have a ſpecial Patent directed to the ſame Juſtices, becauſe they are not the Juſtices of Aſſiſe of that County, and the Patent ſhall be ſuch:

K (*a*) *The King to his beloved and faithful* R. *and* F. *greeting: Know ye, that we have conſtituted you our Juſtices, together with thoſe whom we have aſſociated unto you, to take the Aſſiſe of Novel Diſſeiſin which* A. *and* B. *his Wife have arraigned before you by our Writ againſt* C. *of Tenements in* N. *And therefore we command you, that at a certain Day and Place which you ſhall appoint for this* [178.] *Purpoſe, you take that Aſſiſe, doing thereupon that which belongs to Juſtice, according to the Law and Cuſtom of our Realm, ſaving to us the Amercements forth coming thereof: For we have commanded our Sheriff of* Lincolnſhire, *that he cauſe to come before you that Aſſiſe at a certain Day and Place, whereof you ſhall give him Notice. In Witneſs whereof we have cauſed theſe our Letters to be made Patent. Witneſs*, &c.

A And if the Writ aforeſaid be directed to the Sheriff, and thoſe who are aſſigned by the Writ to be Juſtices of that Aſſiſe, be the Juſtices of Aſſiſe in the ſame County, then it ſeemeth the Party needeth not to have a ſpecial Patent to them for that Aſſiſe; for their (*b*) general Patent to them to take all 29 Aſſ. 40. Aſſiſes ſhall be ſufficient for that Aſſiſe and all other Aſſiſes: For the Juſtices of Aſſiſe uſe but to make one general Precept for all Aſſiſes according to their general Commiſſion and Patent; and not to make a ſpecial Precept for every ſpecial Writ directed to the Sheriff, and eſpecial Patent made unto them to take any ſpecial Aſſiſe for ſuch Party.

B And if an Aſſiſe be brought in the Common Pleas or King's Bench, there the Form of the Writ is:

A. *hath complained unto us, that* B. *unjuſtly*, &c. (until) *in Peace until* Saturday *in the Octave of Saint* Michael *next coming*; or thus, *until* Saturday *next after the Morrow of All Souls next coming, and in the mean time*, &c. *and ſummon*, &c. *that*, &c. *before us at* W. *or before our Juſtices at* W. *ready thereupon*, &c.

C And in Aſſiſe when he purchaſeth the Writ, he ought to find Sureties in the Chancery; and then the Form of the Writ is ſuch:

The King, &c. A. *hath complained unto us that*, &c. *unjuſtly*, &c. *diſſeiſed him of his Freehold in* N. *after the firſt Paſſage of Lord King* Henry, *Son of King* J. *into* Gaſcoigne; *and becauſe the aforeſaid* A. *hath made us ſecure to proſecute his Claim by* C. *and* D. *in your County, we command you, that you cauſe that Tenement to be reſeized*, &c. as above.

D And another Form of the Writ againſt a Body Corporate is thus (*c*):

A.

(*a*) *Note*; The Patent remains with the Plaintiff. 33 *H.* 6. *Aſſiſe* 460. The Juſtices may call the Jury, though the Party does not ſhew his Patent. For if he brings his Patent before the Aſſiſe ought to be awarded, it is Time enough. 3 *H.* 4. *Aſſ.* 358. See 8 *R.* 2. *Aſſ.* 368. 34 *Aſſ.* 8.

(*b*) And yet ſee 5 *Ed.* 4. 133. a general Patent is ſufficient for all Aſſiſes arrained before the Patent, but for thoſe arrained after the general Patent, there ought to be a ſpecial Patent, *Quære.* 29 *Aſſ.* 40.

(*c*) *Note*; An Aſſiſe of Rent lies againſt the Pernor only, or againſt all, or againſt the one, or the other. 9 *Ed.* 4. 11. But if an Aſſiſe brought againſt the Pernor and the Tenant, the Tertenant ſhall not plead in Bar. 12 *H.* 4. 21. *Aſſ.* 1.

Note; An Aſſiſe of Rent-Service may be brought againſt the Tenant in Right, though he be not Tenant of the Land, as againſt the Meſne, 17 *Ed.* 3. 69. and in ſuch Caſe, though he be diſſeiſed, 9 *Ed.* 3. 8. or if he makes a

33 Ed. 3. Brief 921. 22 H. 6. 24. 5 Ed. 2. Avowry 206. 19 Ed. 3. Brief 468. cortra.

D

A. *hath complained to us, that* B. *Mayor of the City of* C. *and the Commonalty of the ſame City, unjuſtly*, &c. Or thus; A. *hath complained unto us, that* I. *Abbot of the bleſſed* Mary *of* York, *and Friar* P. *of* C. *a Monk of the ſame Abbot, and Friar* I. *of* P. *a Convert of the ſame Houſe, unjuſtly*, &c. Or thus; C. *Chaplain of the Chauntry in the Church of* N. *hath complained unto us, that* B. *unjuſtly*, &c.

3 Aſſ. pl. 18. Plow. 86. b. 11 Ed. 2. Garranty 83.

If a Man have a Rent-ſervice, or a Rent-charge, or Rent-ſeck, iſſuing out of Land for Life, in Tail or in Fee, if he be diſſeiſed of the Rent, he ſhall have an Aſſiſe, and the Writ ſhall be general, *That unjuſtly*, &c. *he hath diſſeiſed him of his Freehold in* N. and ſhall make his Title to the Rent.

(*a*) And the Rule in the Regiſter is, That when a Man is diſſeiſed of a Rent-charge or of a Rent-ſeck, it behoveth that all the Tenants of the Tenements charged be named (*b*) in the Writ of Aſſiſe, and all the Land put in View, although he were diſſeiſed but by one Tenant only, but it is otherwiſe of a Rent-ſervice.

9 H. 5. 13. 7 Ed. 6. 89. 13 Aſſ. 38. Weſt. 1. c. 31.

E

And in an Aſſiſe of *Novel Diſſeiſin* a Man ſhall not vouch any one, unleſs he be named in the Writ, and preſent when he is vouched, and would preſently enter into the Warranty, and warrant the Land, *&c.*

1 Inſt. 20. b. 35 H. 6. 7. 3 Ed. 3. Aſſ. 175, 401.

F

(*c*) But in an Aſſiſe of *Mortdaunceſtor* he may vouch at large. And a Man ſhall have an Aſſiſe of *Novel Diſſeiſin* of an Office, if he have the ſame for Life; and the Writ ſhall be, *That he hath diſſeiſed him of his Freehold in* D. and he ſhall make his Plaint of the Office, and ſhew his Title in the Plaint.

9 H. 4. 6. 8 Ed. 4. 16. 22 H. 6. 4. 6 Aſſ. 12. Br. Aſſiſe 145.

And ſo if a Man have any Profit granted unto him out of Land for Life, or in Fee, as to have the Fruit of Apples, Nuts, Acorns, or other Profits whatſoever, he ſhall have an Aſſiſe of them, if he be diſſeiſed of them, as appeareth by the Statute of *Weſt.* 2. *cap.* 25. (*d*).

31 Ed. 1. Aſſ. 440.

G

And ſo of Toll, Tonnage, Paſſage, Pontage, Pannage, and other like. And if Tenant by Statute-merchant, or by (*e*) Statute-ſtaple, be diſſeiſed of

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Gift in Tail, *contra* if he makes a Feoffment, though the Feoffee does not give Notice, 3 *Ed.* 3. 21. See 33 *Ed.* 3. *Aſſiſ.* 456. the Pernor ſhall be named, elſe it ſhall abate. *Note;* In a *Præcipe* of Rent againſt *A.* who pleads that the Tenements put in View are three Acres, whereout the Rent is ſuppoſed to iſſue, and that one *B.* holds a Meaſe not named, it is no Plea without ſaying that he is Pernor of the Rent; adjudged 21 *Ed.* 3. 33. An Aſſiſe lies of Tithes againſt the Pernor, without naming the Tenant, for Tithes are not iſſuing out of the Land. *Dyer* 84. See Sir *Nicholas Acton*'s Caſe; if *A.* has a Rent, and *B.* levies the Rent, claiming the Rent, and it is not paid to *A. B.* is Pernor, and the Aſſiſe muſt be brought againſt him, and not only againſt the Tertenant, *per Fitzh.* But *Shard* denied it, and ſaid, it could not be intended the ſame Rent. 30 *Aſſ.* 5. See it brought againſt the Pernor alone. 22 *H.* 6. 23.

(*a*) And ſo it is, though it be a Rent-ſeck, which once was a Rent-Service.

(*b*) Although he be out of Court by his Default, 13 *Aſſ.* 1. and there be a Recovery in Value, 16 *Aſſ.* 19. and he ſhall vouch or have Aid of him, who is named in the Writ only. 9 *H.* 5. 13.

(*c*) See the Notes at the End of this Writ of Aſſiſe of Offices, *&c.*

(*d*) And ſo of Eſtovers, *&c.* if the Tertenant cuts down the Wood, *&c.* 2 *H.* 4. 11. but the Statute does not extend to an Eaſement as a Way, *&c.* thereof an Aſſiſe does not lie. 34 *Aſſ.* 14. See a Plaint of Eſtovers in Time of *R.* 2. *F. Grants* 104.

(*e*) If the Tenant by Statute be ouſted, the Tenant of the Freehold ſhall have an Aſſiſe, and alſo the Tenant by the Statute, and if the one recovers firſt, the Writ of the other ſhall abate. 12 *H.* 6. 4.

any Lands which they have in Execution until their Debts be levied, they ſhall have an Aſſiſe of *Novel Diſſeiſin*, and recover their Term; and yet they ſhall have but a Chattel, *ſcil'* the Land for the certain Term of Years, but that is by reaſon of Statutes thereof made.

And ſo he ſhall have an Aſſiſe, *&c.* of the Land which he hath in Execution by *Elegit*, if he be deforced thereof, by the Statute of *Weſt* 2. *cap.* 18.

H (*a*) And by the Statute of *Weſt.* 2. *cap.* 25. Aſſiſe is given, if one with his Cattle do eat the ſeveral Paſture of another, the other may have an Aſſiſe of the Paſture, and waive the Poſſeſſion, although the other do not claim the Freehold of the Land.

I And ſo if the Lord, or other Man who hath a Rent iſſuing out of the Lands, do often diſtrain for the Rent or Service where none is behind, the Tenant may have an Aſſiſe for this Diſtreſs by (*b*) the Common Law. And that Aſſiſe lieth between the Lord and the Tenant, or between the Lord Paramount and the Tenant Paravail, as appeareth 27 *Aſſ.* 51. But it ſeemeth reaſonable, that the Tenant have the Aſſiſe of *Sovient foits* diſtrained againſt him who claimeth a Rent-charge out of Land; *tamen quære.* And if a Man ſueth divers Aſſiſes againſt one Man in ſeveral Towns, or againſt ſeveral Men in ſeveral Towns, he may ſue forth a Patent to the Juſtices for all thoſe Aſſiſes; and the Form of the Patent ſhall be ſuch:

27 Aſſiſe 51. Br. Aſſ. 274. 28 Aſſ. 50, 6. Br. Aſſ. 291. 9 H. 7. 5. 14 H. 6. 26. 27 Aſſ 21. The Plaintiff diſtrained for Fealty pending a Ceſſavit, &c. 20 Ed. 3. Aſſ. 33.

The King to his beloved, &c. *greeting: Know ye, that we have conſtituted you*, &c. *to take the Aſſiſe of Novel Diſſeiſin*, &c. *which*, &c. *of Tenements in* N. *and to take the Aſſiſe of Novel Diſſeiſin which* A. *&c. before you by our other Writ againſt*, &c. *of Tenements.* And ſo if there ſhall be more.

[179.]

A If a Man be ſeiſed of Parcel of a Rent which is payable at a Day, and
afterwards the Tenant will not pay the Reſidue of the ſame Rent which is
due at the ſame Day, he who ought to have the Rent ſhall have an Aſſiſe of
Novel Diſſeiſin of the whole Rent, as well of that which he is ſeiſed of, as of
the Reſidue, and that Seiſin of Parcel of the Rent ſhall be to him a Seiſin of
B the whole Rent. And if a (*c*) Man do diſtrain for his Rent pendent an Aſ-
ſiſe for the ſame Rent, he ſhall abate his Aſſiſe; but if he diſtrain for Homage
pendent the Aſſiſe for Rent, which is Parcel of that Service, that ſhall not
abate the Aſſiſe, for an Aſſiſe doth not lie of Homage.

5 Ed. 4. 2. 12 Ed. 3. 7. 49 Ed. 3. 15. Litt. 129. 8 Aſſ. pl. 4. 29 Aſſiſe 22. Br Aſſ. 302. Fitz. 288. 47 Ed. 3. 7. 12 Ed. 4. 11. 29 Aſſ. 52.

(*a*) See by the Statute 32 *H.* 8. in an Aſſiſe for Tithes, the Writ ſhall be *de libero Tenemento*, and he ſhall make a ſpecial Plaint and Title therein. *Dyer* 83.

(*b*) See 28 *Aſſ.* 50. No Aſſiſe lies, for too often or exceſſive Diſtraining, or for diſtraining for Homage, Fealty or Suit. For, for theſe Duties no Diſtreſs can be exceſſive. 42 *Ed.* 3. 26. And in this Writ a Stranger being Tertenant may plead *Rien arrear.* See 27 *Aſſ.* 57. 28 *Aſſ.* 50. 20 *Ed.* 3. *Aſſ.* 33.

(*c*) But it is otherwiſe, if the Bailiff diſtrains without his Commandment or Conſent, 20 *Ed* 2. *Aſſ.* 397. the Grantee of a Rent charge being ſeiſed, demanded the Rent on the Land, the Tenant not being there, it is not paid, he diſtrains, a Stranger without the Tenant's Aſſent, makes Reſcous; an Aſſiſe on this being brought againſt the Tenant, it abated, becauſe tho' Non payment be a Diſſeiſin, yet when he is diſtrained afterwards the Diſſeiſin is purged, and he ſhall have an Aſſiſe alone, but the Reſcous, and the Reſcuſſor ought to be named. 29 *Aſſ.* 52 and 59. *Vide Poſt.* K.

Quære, if for frequent Diſtreſs 28 Aſſ. 50.
Br. Aſſ. 291.
8 H. 6. 24.
34 H. 6. 46.
2 R. 2.
2 H. 4. 3.
3 Ed. 3. 74.
49 Ed. 3. 14.
15 Aſſ. 44.
49 Aſſ. 5.
Dyer 193.
7 Aſſ. 18.
Br. Aſſ. 127.
11 Aſſ. 13.
ibid. 168.
18 Aſſ. 4. 20.
per Cur'. 14 Aſſ. 1. 11 Aſſ. 30. 18 Aſſ. 4. 42, 43. 15 H. 7. 10. If there be ſufficient at the Time of the Improvement, although not after, it is not material, Aſſ. 18.

C And Seiſin of Rent by an Abbot ſhall be a ſufficient Seiſin for the Succeſſor to have Aſſiſe of the Rent, if he be denied the ſame, or Reſcous made againſt him; but Seiſin of Rent of the Father ſhall not be ſufficient Seiſin to the Son to have an Aſſiſe of the Rent, if Reſcous be made unto him of the Rent; becauſe that the Abbot hath the Rent in the Right of his Houſe, which Houſe continueth, and ſo the Seiſin of the Predeceſſor is the Seiſin of the Succeſſor, but the Father hath the Rent in his own Right; and the Son ſhall have the ſame in his own Right; and then he ought to have a new Seiſin. D And a Man may have one Aſſiſe of ſeveral Rents, or of Land and Rent, and Officers and Profits apprender in his Soil, and all in one Writ. E (*a*) And the Lord Paramount may have Common appendant in the Lands of the Tenant Paravail to his Lands which he hath by Purchaſe; and the Tenant Paravail may improve againſt the Lord Paramount, as well as he may againſt other Commoner or Neighbour, if he leave him ſufficient Common. *Quod vide M.* 19 *Ed.* 3. *t.* Aſſiſe in the Abridgment (*b*).

2 Ed. 4. 5.
22 Ed. 4. 9, 14, 16.
12 Ed. 4. 5.
2 H. 6. 2.

F And the Seiſin of the Guardian ſhall give Seiſin to the Ward to have an Aſſiſe, if he be diſſeiſed. And ſo of Tenant by Statute-merchant. And Seiſin by the Hands of Tenant for Life of Lands out of which a Rent is iſſuing, is a ſufficient Seiſin to have an Aſſiſe of the Rent, if it be afterwards denied.

8 H. 6. 17.
8 Aſſ. 16.
Aſſiſe 191.

And ſo it ſeemeth (*c*) Payment of the Rent by the Tenant for Years of the Land is a ſufficient Seiſin to have an Aſſiſe of the Rent, if it be afterwards denied; *tamen quære.*

21 H. 7. 35. or 350.
44 Ed. 3. 23. contr.
7 Ed. 4. 7.
12 Ed. 4. 9.
41 Ed. 3. 24. 16 Aſſ. 7. 35 Aſſ. 5. 8 H. 6. 14.

G A Feme Covert ſhall not be a Diſſeiſoreſs of any Land, if ſhe do not actually enter; nor ſhall ſhe be a Diſſeiſoreſs by the Huſband's Act. And an Infant ſhall not be a Diſſeiſor by his Commandment. But a Man of full Age may be a Diſſeiſor, if he command another to enter into Land.

2 Aſſ. 3.
12 Aſſ. 87.
5 Ed. 4. 15.

H (*d*) If a Man recover a Rent, the Sheriff may put him in Seiſin by Wood, or by any Parcel of the Land out of which the Rent is iſſuing.

34 Aſſ. pl. 12.
13 H. 7. 16.
40 Ed. 3. 21.
49 Ed. 3. 15.

I And Seiſin of Rent by a Parſon or a Chauntry Prieſt, which they have in the Right of their Church, ſhall be a Seiſin to their Succeſſors to have an Aſſiſe of the Rent, if they be denied the ſame after the Death of their Predeceſſors, as well as of an Abbot, *&c.* *Quod vide* 34 *Ed.* 3. *Lib. Aſſ.*

(*a*) Alſo appendant to the Demeſns of his Manor, 18 *Ed.* 3. *Admeaſurement* 7. and accordingly adjudged, 18 *Ed.* 3. 42, 43. and ſee if the Tenant ſhall have a *Quo Jure* there.

(*b*) For he has not Common *ratione Dominii.* Aſſiſe of Common ſee the next Writ *Poſt.*

(*c*) See Seiſin of the Rent by the Hands of the Tenant at Will, pending the Writ, abates it, as agreed, 27 *Ed.* 3. 83.

(*d*) But if one has ſuch a Return on an Award in Replevin, this is no Seiſin of the Rent, for by the Judgment in the Avowry, he ſhall not recover any Rent, but only a Pledge; and therefore it is adjudged, that upon a Judgment by the Avowant for Rent, no *Scire facias* lies for the Arrears, for which the Avowry was made, and no others.

K A Man ſhall not be adjudged a Diſſeiſor by the Act of his Tenant at Will: Although the Tenant at Will do Reſcous for Rent, *&c.* he ſhall be adjudged the ſole Diſſeiſor and not the Tenant of the Freehold: But if the Tenant of the Land pay the Rent unto a Stranger who ought not to have the ſame, that Payment is a Diſſeiſin to him who ought to have the Rent (*a*).

(*a*) See 16 *Aſſ.* 15. But 24 *Ed.* 3. 40. and 40 *Aſſ.* 19. ſeem *contra. Vide* B. *ſupra.*

Aſſiſe, where to be taken at large.

In Aſſiſe by an Infant, if the Deed of his Anceſtor be pleaded againſt him, the Aſſiſe ſhall be taken at large, if the Deed bear Date in the ſame County; but if it bears Date in a Foreign County, the Aſſiſe ſhall be adjourned into Bank; and if it be taken at large, it is Error; for the Deed cannot be tried in another County. 21 *Ed.* 3. 20. 3 *H.* 4. 17, 18. See *contra* 26 *Aſſ.* 39. An Aſſiſe was awarded at large on a Divorce pleaded between the Plaintiff's Father and Mother. 30 *Aſſ.* 45. An Aſſiſe awarded at large on a Divorce between the Infant's Anceſtors pleaded. 37 *Aſſ.* 5. So an Aſſiſe was awarded at large on pleading an Execution againſt an Infant upon a Recognizance by his Anceſtor. 38 *Aſſ.* 5. But an Aſſiſe ſhall not be awarded at large, where a Fine or Recovery is pleaded againſt an Infant, without acknowledging the Poſſeſſion to be in him. 24 *Ed.* 3. 64. 7 *H.* 4. *per Skreen.* If a Bar be pleaded againſt an Infant Plaintiff in an Aſſiſe, the Matter thereof ſhall be inquired, and alſo all thoſe Things which may avoid the Infant's Title; but when the Defendant pleads to the Aſſiſe, it is ſufficient, if the Verdict be given without inquiring into the Infant's Title, 12 *H.* 4. 22. adjudged; yet ſee there *per Hankſ.* If an Infant pleads in Bar, and Title is made, the Infant ſhall anſwer to the Title, or elſe the Aſſiſe ſhall be awarded.

Aſſiſe, where to be in Right of Damages, and where to inquire of the Points of the Writ.

In an Aſſiſe the Tenant pleads, that the Plaintiff is a Nun profeſſed, *&c.* and ſhe is certified by the Biſhop, no Nun profeſſed, here the Aſſiſe ſhall be taken on the Seiſin and Diſſeiſin, and not in Right of Damages, for the Plea is to the Writ. 21 *Ed.* 3. 59. In *Mortdaunceſtor* the Tenant pleads a Releaſe, if it be found againſt the Tenant, the Points of his Writ ſhall not be inquired, but only the Damages; but if he pleads to the Writ, or vouches, which is counterpleaded, there ſhall be an Inquiry of the Points of the Writ *de Mortdaunceſtor*, 39 *Aſſ.* 13. 17 *Ed* 3. 28. accordant; but if a foreign Releaſe be pleaded and denied, and at the Day in Bank, the Tenant makes Default, the Aſſiſe ſhall be awarded *at large*, 22 *Ed.* 3. 4. and *ibid.* 12. an Aſſiſe awarded in Right of Damages on Failure of the Record, 24 *Ed.* 3 61. an Aſſiſe awarded on a foreign Releaſe pleaded, and Default of the Tenant at the Day in Bank. 30 *Ed.* 3. 12. If the Tenant pleads a Bar which does not confeſs the Ouſter, and the Bar is ruled inſufficient, there Seiſin and Diſſeiſin ſhall be inquired, and therefore he may plead (or confeſs) an Ouſter at the Taking of the Aſſiſe, *per Tanſ.* 22 *Ed.* 4. 39. and *per Hall* and *Gaſcoign*, it is uſual to inquire of the Seiſin and Diſſeiſin in ſuch a Caſe, but not to award (Damages.) 8 *H.* 4. 22. If in an Aſſiſe of Rent, the Tenant pleads *hors de ſon Fee*, and it be found againſt him, the Seiſin and Diſſeiſin ſhall not be inquired, 10 *Aſſ.* 24. and 10 *Aſſ.* 18. ſo if he pleads a Releaſe of the Plaintiff, 8 *Aſſ.* 15. or other Deed, *&c.* 11 *Aſſ.* 26. and ſo if he pleads a Deed of the Plaintiff's Anceſtor with Warranty, and the Plaintiff makes Title, which is found againſt the Tenant, 17 *Aſſ.* 18 and yet it ſeems clear, that if the Tenant acknowledges the Plaintiff's Seiſin, and he counterpleads it, which is found againſt him on an Iſſue or Demurrer, the Aſſiſe ſhall be taken but in Right of Damages. 28 *Aſſ.* 21, 23. 40 *Aſſ.* 19. For he is a Diſſeiſor by the Counter-pleading, and he has confeſſed the Seiſin; yet it ſeems it ſhall be inquired *Ex officio*, if he was a Diſſeiſor with Force. See 13 *Ed.* 3. *Aſſiſe* 117. If Baron and Feme plead a Record in an Aſſiſe, and at the Day they make Default, now if the Plaintiff will releaſe Damages, he ſhall have Judgment, but if the Baron makes Default, and the Feme is received, and pleads a Record, *&c.* and after makes Default, now the Aſſiſe ſhall be taken on the Seiſin and Diſſeiſin, 10 *H.* 4. 14. 11 *H.* 4. 51. 37 *Aſſ.* 1. adjudged, that if the Tenant pleads to the Writ, and the Plaintiff maintains his Writ with ſuch a Plea as proves (alledges) a Diſſeiſin in the Tenant, and the Tenant demurs thereto, the Aſſiſe ſhall be awarded in Right of Damages on the Diſſeiſin confeſſed. 1 *H.* 6. 5.

Aſſiſe of Office, and Profit apprender.

An Aſſiſe was brought in *Middleſex* of the Profits of the Office of Packing Wools, *&c.* within the Liberties of *London*, granted by the King, by *Norris* v. *Coniſbrook*; and it was agreed, 1.

That the Plaint in an Aſſiſe ſhall never abate for want of Form, and therefore, tho' the Courſe is in an Aſſiſe of Office or Corrody, or Common apprender, &c. to ſhew the Diſſeiſin, and then the Title: yet if he ſhews the Title firſt, and then the Diſſeiſin, it ſhall not abate. 9 *Ed.* 4. 6. But in thoſe Caſes where he makes Title in his Plaint (as regularly he ought to do in an Aſſiſe of Office, Corrody, &c. yet ſee *Raſt. Entr.* 75. *Hors de ſon Fee* pleaded in Part of an Aſſiſe of Rent, 15 *Ed* 4. 24. or of Land. 40 *Ed.* 3. 38.) There he ought to make his Plaint to purſue his Title, as if a Grant be made to have the Surveying and Packing of all Clothes which ſhould go beyond Sea, he ought to ſhew, that thoſe Clothes of which he was ouſted the Surveying, were Clothes to go beyond Sea. 2. He who makes a Plaint in an Aſſiſe of Office, need not be ſo preciſe in ſetting out his Title, as if he was to ſue againſt the King by Petition; for one need not make ſo exact a Title againſt Pernors of Profits as againſt a Tenant, and therefore he need not ſhew who had the Office before, or that it was an ancient Office, 9 *Ed.* 4. 11. and yet if it was not an ancient Office, it ought to be created and granted by the Words *Conſtituimus,* &c. 8 *Ed.* 4. 6. If one makes a Plaint of an Office, he need not ſhew that it is an Office of Profit, or that Fees belong thereto, 8 *Ed.* 4. 22. and yet if it be only an Office of Charge, an Aſſiſe does not lie thereof, 27 *H.* 8. 38. but if he be ouſted by a Pernor, he has his Remedy by ſome original Writ, according to his Caſe, and ſo it is in Caſe of a Corrody. 17 *Ed.* 2. *Nuper obiit* 12. in the Caſe of *Conſt.* 27 *H.* 8. 12. 4 *Ed.* 3. *Brief* 736, 793, 794.

Aſſiſe, how it is to be brought of an Office.

1. If he be ouſted of the Office, then the Aſſiſe ſhall be brought of the Office, *cum pertinentiis*; for if his Plaint be of the Office, and of the Profits thereof, he makes his claim of one Thing twice, and therefore his Plaint ſhall abate, 8 *Ed.* 4. 22. agreed; and ſo is 30 *Aſſ.* 4. for the Office of Meter. 2. If one be ouſted of Parcel of the Profits of his Office, this may be alledged to be an ouſter of the whole Office, if the Party will. 5 *Ed.* 4. 8. *per Cur.* But if he will, he may make his Plaint only of the Profits of his Office, and if he be ouſted of Parcel of the Profits, he may have an Aſſiſe of thoſe Profits: So if one has a Corrody *de pane & cerviſia*, if he be ouſted of only Part of the Bread, &c. he ſhall have an Aſſiſe of the whole Quantity of Bread for the Neceſſity, but he need not bring an Aſſiſe of his Corrody, 22 *H.* 6. 10. 3 *Ed.* 3. *Aſſ.* 175. 13 *Ed.* 3. *Plaint* 23. 11 *Aſſ.* 22. 30 *Aſſ.* 4. and ſo *Note* a Diverſity between a Thing ſeverable and entire. If *A.* grants a Rent of twenty Pounds out of twenty Acres, in twenty ſeveral Counties, a Denial of Part of the Rent is a Diſſeiſin of the whole, and the Aſſiſe ſhall be brought *in confinio comitatus.* But if *A.* grants Eſtovers in two ſeveral Woods, and the Grantee be diſturbed in one Wood, he ſhall not have an Aſſiſe of that only. 22 *H.* 6. 10, 11. 3. If an Office extends into divers Towns, Hundreds, or Counties, it is an Office for which an Aſſiſe lies of the Profits, by the Stat. *Weſt.* 2. where *Note*; If an Office extends into divers Vills or Counties, &c. an Aſſiſe lies for the *Profits* in any Vill or Hamlet, where the Grantee is ouſted, for the *Profits* are Things ſeverable. If one be Sheriff, or Bailiff of an Hundred, or Manor for Life, if he be ouſted of the Office, he may have a Writ or Plaint within the Sherifalty or Bailiwick of ſuch County, City, Hundred, or Manor, without ſhewing in which of the Vills, becauſe well known. But if it be for the Bedelry of an Honour, &c. there he ought to bring his Writ in all the Vills, where the Office extends. Alſo in the former Caſe, the Hundred, or County, (City) ſhall be put in View; ſee theſe Books. 16 *Ed.* 2. *Aſſ.* 370. 18 *Ed.* 2. *Aſſ.* 377. 8 *Ed.* 3. 56.

If the King grants 6 *d.* on each Sack of Wool, within the County of *York*, the Grantee ſhall have an Aſſiſe of the Profits in any particular Place within the County, where he is diſturbed. But if he brings an Aſſiſe of the Office, the whole County ſhall be put in View, as in the principal Caſe *ſupra* was held, ſeeing the Office there extended into divers Counties. (For it was averred to be within the Liberties of *London*, &c.) therefore the Aſſiſe for the Office ſhould be brought *in Confinio Comitat'*, but for the Profits, it may be brought in any Vill or Place where the Diſſeiſin is; but then how ſhall it be in caſe the Office extends throughout *England*, and it ſeems to me moſt reaſonable, that the Office ſhould be ſeverable, becauſe it does not charge the Land, but only reſpects the Perſon; and therefore he may alſo have an Aſſiſe of his Office in whatever Place he is diſſeiſed; as ſuppoſe he diſſeiſed him of his Office of Meaſurer in ſuch a Town, &c. See there the Caſe of the Uſher of the Exchequer. 22 *H.* 6. 10, 11. *Et poſtea partes concordaver'*. See an Aſſiſe of the Office of *Filacer*, and the Poſt put in View, *Dyer* 114. *Vaux*'s Caſe; and if it be an Office concerning Land, it ſeems he ought to name the Tenant of the Soil. 8 *Ed.* 1. *Aſſ.* 285.

Writ of Common of Paſture, Turbary or Piſcary.

L THE Writ of Aſſiſe of (*a*) *Novel Diſſeiſin*, of Common of Paſture, or of Turbary, or of Piſcary, lieth where a Man hath Common of Paſture appendant or appurtenant to his Manor or Houſe, or Land which he hath for Term of Life, or in Fee-ſimple, or in Fee-tail; if he be diſturbed of his Common, ſo that he cannot take it as he ought to do, he ſhall have an Aſſiſe of *Novel Diſſeiſin* thereof; and the Writ ſhall be ſuch:

(*b*) *The King to the Sheriff*, &c. A. *hath complained unto us*, *that* B. *unjuſtly*, &c. *hath diſſeiſed him of his Common of Paſture in* N. *which belongs to his Freehold in the ſame Town*, or in another Town, *after the firſt Paſſage of*, &c. (as in an Aſſiſe of Land): *And therefore we command you*, *that if the ſaid* A. *ſhall make you ſecure*, &c. *then cauſe twelve free and lawful Men of that Neighbourhood to view that Paſture and the Tenement*, *and their Names to be put in the Writ*, *and ſummon*, &c. *before our Juſtices*, &c. *or before us*, &c. *on* Thurſday *next after the Morrow of the Octave*, &c. or thus, *before our Juſtices at the firſt Aſſiſe when they ſhall come into thoſe Parts*; or thus, *before our beloved and faithful* R. *and* F. *and thoſe whom*, &c. (as above).

11 H. 6. 22. The Writ was *de libero Tenemento*, and his Plaint of Common of Paſture, for which the Writ abated.

And if the Common of Paſture, or Turbary or Piſcary be not appendant or appurtenant to any Manor, nor Land nor Tenement, then theſe Words in the Writ, *which belong to his Frank-tenement*, ſhall be left out in the Writ; and then the Writ ſhall be ſuch:

The King, &c. A. *hath complained unto us*, *that* B. *unjuſtly*, &c. *hath diſſeiſed him of his Common of Paſture in* N. *after the firſt Paſſage*, &c. (until) *of that Neighbourhood to view that Paſture*, *and their Names to be put in the Writ*, &c. As in the Writ of Aſſiſe of Land.

And the Patent made unto the Juſtices of the Aſſiſe of Common is as the Patent made to the Juſtices of Aſſiſe of Land; but where it is ſaid in the Patent of Aſſiſe of Land in that Place, *Of his Freehold*, &c. he ſhall ſay in this Patent, *Of his Common of Paſture in* N. *&c.*

11 H. 6. 22. per Paſton.

(*a*) See 2 *H.* 4. *per Markham*, if the Tenant ploughs the Land, wherein I have Common, I ſhall have an Aſſiſe, and not a Writ on the Caſe. See 4 *Ed.* 2. *Aſſ.* 449. that an Aſſiſe of Common does not lie without naming the Tenant of the Soil.

(*b*) Here *Note*, That an Aſſiſe *de Libero Tenemento* does not lie of Common, for it is no Tenement, and therefore by a Grant of all Lands and Tenements, it is held by ſome, that Common in groſs does not paſs. And yet a Writ of Dower lies thereof, and he ſhall make his Demand of Common. 11 *H.* 6. 22. And *Note*; In an Aſſiſe of Common it is not neceſſary to make Title in the Plaint, but the other may demand what he has of Common there, 36 *Aſſ.* 3. the other pleads *hors de ſon Fee*, *&c.* 11 *H.* 6. 27. See in an Aſſiſe for Common appendant, you need not preſcribe. 22 *H.* 6. 10.

[180.] A (*a*) And if a Man have Common appendant or appurtenant to his Freehold which is in his Manor or Land, which is in ſeveral Counties, and he is diſſeiſed of his Common, then he ſhall have an Aſſiſe in the County where the Common is, and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ ſhall be brought in the County where the Land of which the Common is iſſuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in ſeveral Counties, then he ſhall have ſeveral Writs, in the County where the Common is, and where the Land is; and the Forms of the Writs are ſuch:

A. *hath complained unto us, that* B. *unjuſtly and without Judgment hath diſſeiſed him of his Common of Paſture in* N. *which belongs to his Freehold in* R. *and* K. *which are in the Confines of your County and the County of* Lincoln, *after the firſt Paſſage*, &c. Or thus; *Of his Common of Paſture in* N. *in your County and the County of* Lincoln, *which belongs to his Freehold in* K. *in the County of*, &c. Or thus; *Of his Common of Paſture in* R. *and* K. *which are in the Confines of your County and the County of* Lincoln, *which belongs to his Freehold in* K. *in the ſaid County of* Lincoln *in the ſame Confines*, &c.

And upon theſe Writs he may have a Patent directed to certain Perſons who ſhall do Juſtice in that Aſſiſe upon all the Writs.

The King to his beloved, &c. *Know ye, that we have conſtituted you our Juſtices, together with thoſe whom we have aſſociated unto you, to take the Aſſiſe of Novel Diſſeiſin which* A. *hath arraigned before you by our Writs againſt* B. *of Common of Paſture in* R. *and* K. *which are in the Confines of the Counties of* N. *and* L. *Therefore we command you, that at a certain Day and Place in the Confines of the County aforeſaid*, or *in the Confines aforeſaid, which you ſhall appoint for this Purpoſe to take that Aſſiſe*, &c. *For we have commanded the Sheriff of the County aforeſaid, that at a certain Day and Place in the Confines of the County aforeſaid*, or *in the County aforeſaid, whereof you ſhall give him Notice, he cauſe that Aſſiſe*, &c.

5 Ed. 4. 2.
Poſt. 187.
21 H. 6. 9, 10.
7 H. 4. 30.
5 Ed. 3. 2. ac.
10 Aſſ. 5.
Br. Aſſiſe 151.

B And in like manner he may ſue ſeveral Writs of Aſſiſe of Common of Turbary, or of Piſcary, or other like Profits which are in two Counties. And when a Man hath a Rent which is iſſuing out of Land in two Counties, if he be diſſeiſed thereof he ſhall have an Aſſiſe as before is ſaid of Common, *viz.* two Writs, one Patent, as before is ſaid, by the Stat. 7 *R.* 2. *cap.* 10. (*b*).

45 Ed. 3. 12.
15 Ed. 4. 32.
Ryot.
6 H. 7. 14.

(*c*) And a Man cannot uſe his Common appendant with the Cattle of Strangers, unleſs he bring them to ſoil his Land: But he cannot agiſt other Cattle there for Money, which do not manure his Land. 6 *H.* 7. 4. 45 *Ed.* 3. 25.

11 H. 6. 12. 15 Ed. 4. 32. The ſame Law where a Man hath Common as an Inhabitant, he ſhall have it but for thoſe which are levant and couchant within that Town.

(*a*) See a Commiſſion to inquire if *A.* has Common in one County appendant to Land in another County, and a Bridge is between the Land and the Common, which ought to be repaired by one, and the Bridge is broken, ſo that *A.* cannot uſe his Common, he ſhall have an Aſſiſe where the Bridge is, and not where the Common is. 7 *H.* 4. 8.

(*b*) But it was otherwiſe at Common Law. 18 *Ed.* 3. 32.

(*c*) See theſe Diverſities agreed in *Strode's* Caſe, 11 *H.* 6. 22. 14 *H.* 6. 6. and ſee the Caſe of *Rumſey* and *Rawſon*, *Raym.* 171. *Mod.* 18. 25.

And if a Man grant Common unto one for his own Cattle, he cannot uſe his Common with the Cattle of a Stranger.

A Man preſumed to have Common appendant for all manner of Beaſts, and it was holden it could not be Common appendant, for that the ſame is not but for thoſe Cattle which manure his Lands. 9 Ed. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is Common appurtenant. Old N. B. 26.

And ſo if a Man preſcribe to have Common for his own Cattle, he cannot uſe Common with other Cattle.

But if a Man (*a*) claim Common for Cattle without Number, or to have Common for twenty Cattle, there he may agiſt the Cattle of Strangers for Money in that Common.

14 H. 8. 2. If a Man hath Common ſans Number granted, yet the Tenant ſhall have Common for his Cattle. 11 H. 6. 22.

C (*b*) And a Man may claim Common appendant *ratione Meſſuagii*, but it ſeemeth it ſhall be taken that he hath Land lying to his Houſe, *&c.* which the Cattle ought to ſoil, *&c.* *Quære.*

22 H. 6. 42. 27 H. 6. 34. Admittitur. But Priſot, It cannot be but to arable, 20 H. 6. 4. Hulls acc. 5 Aſſ. 2. It cannot be but to ancient Land of that, and not to Land improved, 10 Ed. 2. acc. and there the Land to which it may be appendant, is called Aid and Gain.

D (*c*) None ſhall claim Common by Vicinage but the Lord who hath the Poſſeſſion of the Town, 23 *H.* 6. But yet it ſeemeth, that one Neighbour may E claim Common by Vicinage in the Land of another Neighbour, although he be Lord of the Town, *&c.* And ſo if a Man claim Common in certain Lands ſo long as he dwelleth in ſuch a Town to ſuch a Houſe, or if he claim Common in the Land until the Lands be ſowed, and after the Corn is cut, to have Common there again.

7 Ed. 4. 26. 32 H. 8. Dyer 47. 37 H. 6. 34. ac.

F (*d*) And if a Man be diſſeiſed of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the Land to which the Common is appendant or appurtenant, he ſhall not have Aſſiſe of that Common nor other Remedy.

10 H. 6. 73. So if he be diſſeiſed of the Land, he ſhall not have Common till his Entry. 5 H. 7. 7. 29 H. 8. 4. 7 Ed. 4. 27.

(*a*) See accordant 11 *H.* 6. 22. and therefore ſuch Common is grantable over. See 27 *H.* 8. 10. that it may be granted to two. 22 *H.* 6. 22. 36 *Aſſ.* 3.

(*b*) See 22 *H.* 6. 44. and 11 *Ed.* 3. *Common* 11. one claims Common as appendant to his Manor, and iſſue joined thereupon, where it is ſaid, that if one has Common appendant to his Carve of Land, whereon he has a Houſe, this ſhall not be ſaid appendant to the Houſe, but to the Land: and *Note* there a ſpecial Preſcription.

(*c*) *Note*; The Lord may have in the Land of his Tenant Common appendant to his own Demeſns, *per Green.* 18 *Ed.* 3. *Admeaſurement* 7.

(*d*) See 4 *Ed.* 3. 45. In a *Quod permittat*, of the Seiſin of his Grandfather. *Note*; If one grants Common, and does not ſhew in what Place it is to be taken, the Grant is Void, *per Paſton*; if he grants Common throughout his Manor for his Beaſts, he ſhall not have it in his Garden, nor in his Land ſown, nor for Beaſts not commonable; *per Babb.* If one grants Common in his Land, *quandocunque Averia ſua ierint*, he ſhall not have Common, but when the Grantor's Beaſts are there alſo; but if one grants Common to *I. S.* *ubicunque Averia ſua ierint*, he ſhall have Common, but in the Places where the Grantor's Beaſts do go; and therefore if he juſtifies for ſuch Common, he ought to ſhew that the Beaſts went there. 2. If the Beaſts of the Grantor once went there, although he never had any Beaſts there afterwards, yet the Grantee ſhall have the Common. 9 *H.* 6. 36. See 11 *Ed.* 3. *Common* 10. *A.* grants Common to *B.* *in omnibus paſturis ſuis*, to go there with his own Beaſts; *Quære*, if he has Common, though the Beaſts of the Grantor are not there; it ſeems not.

If a Man grant certain Lands to one *cum Communia in omnibus terris ſuis,* G
&c. and doth not expreſs any Place certain, he ſhall have Common in all his
Lands which he had at the Time of the Grant.

And if a Man have Common of Eſtovers by Grant, he cannot build new H
Houſes to have Common of Eſtovers for thoſe Houſes.

The Uſer of Common by Tenants at Will, ſhall be a Seiſin to him in the I
14 H. 6. 6. Reverſion to have an Aſſiſe, if he or his Tenant at Will, be after diſturbed to
uſe the Common.

And *P.* 45 *Ed.* 3. it appeareth, that he who hath Common granted unto K
11 H. 6. 22. him by Specialty, cannot agiſt other Men's (*a*) Cattle in the Common, but
11 H. 7. 7. ought for to uſe the Common with his own Cattle, or ſuch Cattle which he
hath to occupy his Land with, *&c.* or may manure his Lands with Cows
32 Aſſ. 82. which he alloweth to have the keeping for their Manure: But *Thorpe* ſaid,
Thorpe. that if a Man grant to me Common for my Cattle, that I may take other
Beaſts to give me Seiſin in my Common, and preſently drive them off again,
7 Aſſ. Br. if he who granteth the Common do agree thereunto. And in Aſſiſe of Com- L
Aſſiſe 121. mon, all the Tenants of the Land out of which the Common is, ought to be
named, *&c.* as in Aſſiſe of a Rent-charge.

If a Man have an Aſſiſe of Common, and pendent the Writ, he uſeth the M
Common, the Writ ſhall abate, but if the Cattle eſcape into the Land, it
ſhall not abate the Writ although they feed there.

(*b*) And it is to know, Common appurtenant to a Manor may be for N
Cattle without Number, or to a certain Number, and may be appurtenant to
[181.] a Manor by Preſcription or by Grant made ſince Time of Memory, and that
26 H. 8. 4. as well for Cattle certain, as without Number. As if at this Day a Man
granteth to one Common of Eſtovers, or of Turbary in Fee-ſimple to burn
Plow. Com. in his Manor, by that Grant it is (*c*) appurtenant to the Manor, and if he
381. ac. 5. make a Feoffment of the Manor, the Common ſhall paſs to the Feoffee.
Aſſ. 9. And ſo if he grant to a Man and his Heirs Common, as appurtenant to his
Manor of *F.* to common in ſuch a Moor, *&c.* Now by that Grant the
Grantee ſhall have the Common appurtenant to his Manor, and if he make
a Feoffment in Fee, or for Life of the Manor, the Feoffee or Leſſee ſhall
have the Common. As if an Abbot with the Aſſent of his Convent, grant
to another and his Heirs, to find a Chaplain to ſing in his Chapel in his Manor
2 H. 4. 6. of *D.* if he make a Feoffment of the Manor, the Feoffee ſhall have an Ac-
10 H. 7. 13. tion of Covenant againſt the Abbot and his Succeſſors by that Grant, as it
16 H. 7. 9. appeareth. *M.* 2 *H.* 4. 6. *T.* Covenant, and *H.* 42 *Ed.* 3.
42 Ed. 3. 3.

(*a*) Or ſuch Beaſts as he had; ſee accordant 11 *H.* 6. 11.

(*b*) Common appendant for all Manner of Beaſts, 14 *H.* 6. 6. is not appendant, but appurtenant, if it be for Beaſts not commonable. 25 *Aſſ.* 8.

(*c*) See 7 *Ed.* 3. 48. If one grants to *I. S.* eight Acres of Land, *ſimul cum* ſo much Common as belongs to his Oxgang of Land in a certain Place, this is not Common appurtenant, but in groſs; *per Herle*; but ſee there it is adjudged, if one grants an Aſſart *ſimul cum tota Communia quant' pertinet ad unam Bovatam Terræ,* adjudged this is Common in groſs, and he ſhall take as much as another takes for two Bovates or Oxgangs in groſs, and when he pleaſes. *Ratio,* for ſuch Common cannot be appendant to Land.

Writ of Certificate upon Aſſiſe ſued.

A THE Writ of *Certificate* lieth in divers Manners; one is where the Defendant appeareth by (*a*) Bail, and pleads to the Aſſiſe where his Maſter hath a Releaſe to plead, or other Matter in Writing, of which the Jury cannot have Notice; then if the Aſſiſe paſs againſt the Bailiff, the Maſter ſhall have a Writ of Certificate upon that Writing, and thereupon he ſhall cauſe the Aſſiſe to return, and be ſworn to try that Deed, *&c.* as ſhall be more fully after ſhewed.

As a Fine or Recovery. 8 Ed. 3. Br. Aſſiſe 426. 4 H. 4. 5.

B (*b*) And there is another Manner of Certificate, when the Verdict is not well examined by the Juſtices when they take the Verdict, or when they have not well examined, or fully enquired of the Iſſue joined, *&c.*

Plow. 92. a.

C (*c*) And the Certificate ought to be ſued in the ſame County where the Aſſiſe was ſued, and may be ſued before the ſame Juſtices before whom the Aſſiſe paſſed, or before other Juſtices. And if the King's Bench or Common Pleas be in the ſame County where the Aſſiſe paſſed, then the Certificate may be ſued in the King's Bench or Common Pleas, if they be in the ſame County where the Aſſiſe paſſed.

And that Certificate ſhall be a Writ directed to the Sheriff, and the Juſtices ſhall have a Patent made to them as they ſhall have in Aſſiſe, *&c.* And the Form of the Patent made to the Juſtices ſhall be ſuch:

21 Ed. 3. 3. Br. Aſſiſe 63. Vi. 32 Aſſ. 1 One ſhall have a Certificate upon a Defeaſance. 12 H. 4. 10. 41 Aſſ. 5. Certificate was at the Common Law before Judgment Vi. 8 Ed. 3. Fitz. Aſſiſe 412. Plow. Com. 92.

D *The King to his beloved and faithful* A. B. *and* C. *greeting: Becauſe certain Doubts are ariſen upon ſome Articles touching the Aſſiſe of Novel Diſſeiſin which was ſummoned between* A. *and* B. *and taken before you the aforeſaid* B. *and our beloved and faithful* I. *at* N. *by our Writ, as from the Complaint of him the ſaid* A. *we have received Information, we have conſtituted you our Juſtices, together with thoſe whom we have aſſociated unto you, to take the Certificate thereupon: And therefore we command you, that at a certain Day and Place which you ſhall appoint for this Purpoſe, you take that Certificate, doing thereupon that which to Juſtice belongs, ſaving to us the Amercements,* &c. *We have alſo commanded our Sheriff,* &c. *that at a certain Day and Place which you ſhall give him Notice of, he cauſe to come before you the Jury of that Aſſiſe, to certify you upon the Articles aforeſaid,* &c. *In Witneſs whereof we have cauſed theſe our Letters to be made Patents. Witneſs,* &c.

(*a*) *Note*; After the Aſſiſe awarded in this Plea by the Bail, the Tenant may appear in Perſon, and plead ſuch a Plea, as thereon he may have a Certificate of the Aſſiſe being taken, *&c.* 11 *Aſſ.* 3. 8 *Aſſ.* 17. 10 *Aſſ.* 24. 12 *Aſſ.* 37. 20 *Aſſ.* 1. And ſo he may after the Aſſiſe awarded by Default. 20 *H.* 6. 29. 9 *H.* 7. 24.

(*b*) And it ſeems that ſo long as the Aſſiſe depends in Adjournment, this Execution may be made either without Writ, as 34 *Aſſ.* 1. or by Writ, as 34 *Aſſ.* 5.

(*c*) But if they remove it, then it ſhall not be taken there, but in the County by *Niſi prius.* 7 *H.* 4. 45.

(*a*) And the Form of the Writ of Certificate is ſuch: E

The King to the Sheriff, &c. *Becauſe certain Doubts are ariſen upon ſome Articles touching the Aſſiſe of Novel Diſſeiſin which by our Writs was ſummoned between* A. *and* B. *and taken before our beloved and faithful* H. *and* R. *at* N. *of Tenements in* I. *as from the Complaint of him the ſaid* A. *we have received Information, we have conſtituted the aforeſaid* H. *and* R. or thus, *the aforeſaid* H. *and our beloved* L. or thus, *our beloved and faithful* N. *and* S. *our Juſtices, together with thoſe whom we have aſſociated unto him, to take the Certificate thereupon: And therefore we command you, that at a certain Day and Place whereof the aforeſaid* N. *and* S. *ſhall give you Notice,* (*b*) *you cauſe to come before them the Jury of that Aſſiſe, to certify them upon the Articles aforeſaid, and ſummon,* &c. *the aforeſaid* B. *that,* &c. *before,* &c. *to hear that Certificate: And have there the Names of the Jury and this Writ.*

And that Writ lieth properly where the Verdict is not well examined. But F if he appeareth by Bailiff to the Aſſiſe, and plead *Nul tort, &c.* and it is found againſt him where his Maſter hath a Releaſe to plead, and doth not plead it; then his Maſter ſhall have another Form of Writ upon the Statute of *Weſt.* 2. *cap.* 15. and the Writ ſhall be ſuch:

The King to his beloved and faithful I. *and his Companions Juſtices,* &c. *Whereas in the Statute ſet forth at* Weſtminſter *it is contained, That if the Defendant againſt whom the Aſſiſe paſſed in his Abſence, ſhew any Deeds or Releaſes, upon the making whereof the Jury were not examined, nor could be examined, becauſe there was no Mention made of them in pleading, and probably might be ignorant of the making of thoſe Writings, the Juſtices upon the Sight of thoſe Writings ſhall cauſe the Party to be warned that recovered, that he appear at a certain Day, and ſhall cauſe the Jurors of the ſame Aſſiſe to come, and if he ſhall verify thoſe Writings to be true by the Verdict of the Jurors, or by Inrolment, he that purchaſed the Aſſiſe contrary to his own Deed, ſhall be puniſhed by a certain Penalty contained in the ſaid Statute. And we have received Information from the Complaint of* E. *that* I. *lately arraigned a certain Aſſiſe of Novel Diſſeiſin by our Writ againſt the aforeſaid* E. *and others,* &c. *of Tenements in* S. *which ſaid Aſſiſe hath paſſed in the Abſence of him the ſaid* E. *and others, as it is ſaid, and he the ſaid* E. *hath a certain Writing of Releaſe of the aforeſaid* I. *of the Tenements* [182.] *aforeſaid, upon the making whereof the Jurors were not examined, nor could be examined, becauſe there was no Mention made thereof in pleading: We command you, that having ſeen the ſaid Writing you cauſe to be done to him the ſaid* E. *due, ſpeedy and compleat Juſtice in the Premiſſes, according to the Form of the Statute aforeſaid. Witneſs,* &c.

(*a*) See *Rot. pat.* 1 *Ed.* 1. *M.* 3. and *M.* 34. *in Dorſo. Si forte Aſſiſa illa ſuper quibuſdam Articulis illam contingentibus minus plene Examinata fuerit vos eam plenius Examinetis.*

(*b*) This was the Writ which lay at Common Law, and was always brought before Judgment, and was always a Perfecting of the Verdict, ſo that it ſhall be ſaid one and the ſame Verdict; and therefore, if any of the Jurors therein had died after the Verdict, the Certificate thereon could not be taken by the Reſidue with others; for the Aſſiſe was always pending, and therefore in that Caſe the Examination fails; but it is otherwiſe it ſeems in a Certificate on the Statute. See 12 *H.* 7. 9. and 43 *Aſſ.* 5. a Certificate after Verdict and before Judgment, on a Deed not given in Evidence before, where the Defendant an Infant pleads in Perſon.

And that Writ is as a Patent made to thoſe Juſtices, and upon that they award a Certificate to the Sheriff, to warn the Party to cauſe the Jurors in Aſſiſe to come before them. And that Patent or Commiſſion is commonly made to other Juſtices, as unto the Juſtice before whom the Aſſiſe paſſed, and the ſame appeareth by the Words of the Patent or Commiſſion.

A (*a*) But by the Statute of *Weſt.* 2. *cap.* 25. appeareth, that if the Bailiff of the Defendant do alledge a Record in Bar of the Aſſiſe, the Juſtices may take the Aſſiſe notwithſtanding that Plea of the Bailiff, and give Judgment upon the Verdict, *&c.* But then the Defendant in the Aſſiſe may come to the Juſtices, and ſhew that he hath Matter of Record to bar the Plaintiff in the Aſſiſe, *&c.* That at another Time he barred the Plaintiff in the like Aſſiſe, brought by him againſt the Defendant; or that there is a Writ of higher Nature depending between them for thoſe Lands; and then he ought to ſue forth a Writ to cauſe the Record to be brought before the Juſtices before whom the Aſſiſe paſſed; and thereupon, when the Record cometh before them, if they perceive that the Record ſhall be a Bar in the Aſſiſe, then the ſaid Juſtices ſhall award a ſpecial Writ of *Scire facias* out of the Record of the Aſſiſe, to warn the Party to be before them, *&c.* and if he cannot deny it, nor avoid it, then the Defendant ſhall recover his Seiſin again, and double Damages, and the Plaintiff in the Aſſiſe ſhall be impriſoned at the Diſcretion of the Juſtices. And if the Defendant in the Aſſiſe have not any Record to ſhew, (*b*) but a Releaſe, or other Matter in Writing, which might bar the Plaintiff who recovered in the Aſſiſe; then if the Defendant ſhew thoſe Writings to the Juſtices before whom the Aſſiſe was taken, the Juſtices thereupon may award a ſpecial Writ of Certificate directed to the Sheriff, that he ſummon in the Party, and that he cauſe the (*c*) Jurors in the firſt Aſſiſe, *&c.* to try that Matter, *&c.* And if it be found for the Defendant, then the Plaintiff who recovered by the Aſſiſe, *&c.* ſhall loſe double Damages, and ſhall be alſo impriſoned at the Diſcretion of the Juſtices, as appeareth by the ſaid Statute.

B But whether the Defendant ſhall ſue a ſpecial Patent to the ſame Juſtices to proceed as the Writ aforeſaid is, or that they ſhall proceed and award a ſpecial Certificate upon the Matter in Writing ſhewed them by the Defendant, hath been a Queſtion, becauſe by the Judgment in the Aſſiſe, and Execution awarded, their Authority by Commiſſion is determined, as ſome ſay. But I conceive, that the Statute is a Commiſſion and Patent ſufficient to give Au-

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(*a*) See 12 *H.* 4. 9. After Judgment given for the Plaintiff in Aſſiſe upon the Death of the Juſtices, a *Certiorari* iſſued out of Chancery to the Executors of the Juſtices, to ſend the Record into Chancery, and from thence a *Mittimus* is ſent to the Juſtices of Aſſiſe in the County, with a Writ reciting the Statute.

(*b*) *Quære*, if he ſhew a Releaſe bearing Date in a foreign County, to what Purpoſe or Intent ſhall the Aſſiſe return (it.) 12 *H.* 4. 9.

(*c*) It ſeems *per Cur'*, that the Party ſhall not have his Challenge to thoſe Jurors in the Certificate; *quære*, if it be a Matter happening *ex poſt facto*, as Attaint of the Jurors, *&c.* Yet it ſeems, if others are joined with the Jury, as where any of them die, *&c.* he ſhall have his Challenge, *per Hull*, although the Jury came the firſt Day in the Certificate; yet if they make Default, the Parties ſhall plead notwithſtanding. And *Note*; If the Deed may be proved by Record, then the Inqueſt is not to the Purpoſe. See 12 *H.* 4. 9.

thority to them to award a ſpecial Certificate to warn the Party, and to cauſe the Jurors of the Aſſiſe to appear before them upon the Matter in Writing ſhewed unto them, although Judgment be given in the Aſſiſe, and Execution be paſt; for if there be ſuch Matter, then their Authority remaineth to puniſh the Plaintiff for his Suit, and to reſtore the Defendant again unto his Poſſeſſion, by Virtue of the Statute, as I conceive.

C And if a Man loſeth in an Aſſiſe by Default, where he pleadeth by Bailiff, where he hath Matter in Writing not ſhewed to the Jurors, he may ſue a Certificate upon that Matter before the Juſtices at the next Aſſiſe following, or before the Juſtice of Aſſiſe, or before the Juſtices of the King's Bench, or before the Juſtices of the Common Pleas; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Becauſe*, &c. (as above, until) *We command you that you cauſe the Jurors of that Aſſiſe to come before our Juſtices at the firſt Aſſiſe, when they ſhall come into thoſe Parts, to certify them upon the Articles aforeſaid, and ſummon*, &c. *the aforeſaid* B. *that he be at the ſaid Aſſiſe before the Juſtices aforeſaid to hear that Certificate.*

And if the Certificate be ſued before the Juſtices of the Common Pleas, then the Writ is ſuch:

The King to the Sheriff, &c. *Becauſe*, &c. *as we have received Information*; *We command you, that you cauſe the Jurors of that Aſſiſe to come before our Juſtices at* Weſtminſter *(ſuch a Day) to certify them*, &c. (as above).

And if the Certificate be ſued before the King, then the Writ is as above:

We command you, that you cauſe the Jurors of that Aſſiſe to come, &c. *before us at* E. *on* Saturday, *&c. to certify us*, &c.

D If a Man in Aſſiſe brought againſt him pleadeth a Releaſe, or other Matter in Writing, in Bar of the Aſſiſe, and the Plaintiff doth deny the ſame, by reaſon whereof the ſame doth remain in the Keeping of the Chief Juſtice of the Aſſiſe; and afterwards a new Commiſſion is made to the Chief Juſtice and to other Perſons, to take all Aſſiſes which remain to be taken in that County, for which Cauſe they award a Re-attachment againſt the Defendant, and a Reſummons againſt the Jurors; the Defendant may come and plead the Releaſe or Writing which is in the Keeping of the Chief Juſtice, which was denied, *&c.* And thereupon the Chief Juſtice ſhall have Day until the next Aſſiſes to bring in the Writing; and if before the next Aſſiſes the King's Bench be removed to that County, and that Record of the Aſſiſes is come into the ſame Court, and the Defendant is re-attached, and appeareth not, but maketh Default, for which the Aſſiſe paſſeth for the Plaintiff, *&c.* and that Releaſe not pleaded nor ſhewed, the Defendant ſhall have a ſpecial Writ to the ſaid Juſtice in whoſe Cuſtody the Releaſe or Writing is, to ſend the ſame into the King's Bench, and thereupon the Defendant ſhall have his Certificate out of the King's Bench againſt the Plaintiff upon that Matter; and ſuch Writ is in the Regiſter.

[183.] A If a Man ſue a Certificate, he may have a Writ of Aſſociation upon that Writ, as in Aſſiſe of *Novel Diſſeiſin*, and alſo a Writ of *Si non omnes*, as well as he ſhall have in Aſſiſe of *Novel Diſſeiſin.*

B And a Man may ſue the Certificate before the ſame Juſtices (*a*) before whom the Aſſiſe paſſed, and then the Certificate ſhall iſſue out of the Rolls of the ſame Juſtices: But he may ſue his Certificate before other Juſtices, if he will, and then the Writ and Patent ſhall iſſue out of the Chancery.

C And if ſome of the Jurors be dead, yet it ſeemeth reaſonable that he have the Certificate; and that it be tried by thoſe who are alive, and by others, *&c.* for that is a new Matter upon which they were not charged before; but ſee that Matter debated 32 *Ed.* 3. *Lib. Aſſ.* and 12 *H.* 4. 4. 7 *H.* 4. 45.

D *Anno* 43 *Ed.* 3. It appeareth that a Man ſhall have a Certificate before Judgment given in the Aſſiſe, as well as after Judgment given; and this is at Common Law.

43 Aſſ. 5.

E And a Man ſhall have a Certificate upon an Aſſiſe of Darrein Preſentment, or an Aſſiſe of *Mortdaunceſtor*, or *Juris utrum*; and it is Reaſon that a Man have a Certificate upon an Attaint, if it paſs againſt him by Default, where he hath Matter to bar the Attaint by Releaſe or other Writing, *&c.*

12 H. 4. 9. Weſt. 2. c. 5.

F And if the Record of Aſſiſe be removed into the Common Pleas, the Party may ſue a Certificate in the Common Pleas before the Juſtices there, although the Aſſiſe be taken of Lands in another County. See Title *Proceſs*, *H.* 33 *H.* 6.

7H. 4. 45. ac. 33 H. 6. 20, 21. Nota, Cape pro fine was awarded pendent the Certificate of Aſſiſe.

G (*b*) And the Proceſs in a Certificate is Summons againſt the Jury, and the *Venire facias* againſt the Party, *&c.* and after a Diſtreſs.

H (*c*) And *Niſi prius* ſhall be granted in a Certificate, if the Land be in another County than where the Certificate is brought.

(*a*) See 7 *H.* 4. 45. Aſſiſe taken *in Banco*, which is removed, a Certificate ſhall iſſue upon the Rolls there, and ſhall be taken by *Niſi prius* in the County, 2 *H.* 5. 5. a Certificate is not grantable on the Rolls; but by the ſame Juſtices before whom the Aſſiſe paſſed: But by an original Writ, as 21 *Ed.* 3. 3. an Aſſiſe taken in the Country and adjourned into Bank for Difficulty, and the Judgment given there: No Certificate ſhall iſſue upon the Rolls in Bank, but the Record ſhall be remanded to the Juſtices aſſigned, and they ſhall iſſue the Certificate upon the Rolls before them. See 33 *H.* 6. 20. where after a Record of a Recovery in an Aſſiſe was ſent into Bank by *Mittimus*, a Certificate was there granted upon the Rolls there: But *Note;* It ſeems this Certificate was upon the Record, as it was 21 *Ed.* 3. 3. on a Fine, and 2 *H.* 5. 5. on a Judgment *&c.* had before the ſame Juſtices; for the Statute is, *qoud veniat coram Juſticiariis qui Aſſiſam illam ceperint*; but on a Releaſe, as the Caſe is 33 *H.* 6. 20. there the Clauſe is *Juſticiarii, &c.* See *Rot. Parl.* 9 *Ed.* 2. *M.* 7. *Dorſo*, after the Death of the Juſtices of Aſſiſe, a Certificate before other Juſtices aſſigned by Patent.

(*b*) And the Jurors ſhall have the View here. See 3 *H.* 4. 14.

(*c*) See the Statute *Mag. Char. c.* 12. and 7 *H.* 4. 45. If an Aſſiſe be arrained in *B. R.* at *York*, and the Bank (Court) is after removed to *Weſtminſter*, he ſhall have a Certificate upon the Rolls, and *Niſi prius.*

Writ of Aſſiſe of Nuſance.

4 Ed. 3. 36. & 5 Ed. 2. 43. Fitz. Nuſance 12. Action ſur le Caſe 36.

I ASSISE of Nuſance lieth where a Man levieth a Nuſance to my Freehold, which I have for Life, in Tail, or in Fee-ſimple; then I ſhall have the Writ to redreſs the Nuſance (*a*).

K And if that the Nuſance be done in one County, and the Land to which the Nuſance is done be in another County, then he ought to ſue ſeveral Writs of Aſſiſe of Nuſance, to each Sheriff a Writ, and a Patent made to certain Perſons to be Juſtices in that Aſſiſe, as it ſhall be in Aſſiſe of Common of Paſture, or Turbary, or Rent, or the like; and the Form of the Writ is ſuch:

4 Aſſ. 3. If Nuſance be, and after he to whom the Nuſance is alien the Land, the Feoffee ſhall not have Aſſiſe, becauſe it was before his Intereſt, but the Tenant ſhall anſwer to the Nuſance, as well before his Time as after. 19 Aſſ. 9.

The King to the Sheriff, &c. A. *hath complained unto us, that* B. *unjuſtly and without Judgment hath heightened a certain Pool in* C. *in your County, to the Nuſance of his Freehold in* L. *in the County of* H. *after the firſt Paſſage*, &c. *And therefore we command you, that if the aforeſaid* A. *ſhall make you ſecure to proſecute his Claim, then cauſe twelve free and lawful Men of that Neighbourhood to view that Pool, and their Names to be put in the Writ*, &c.

L. And in the other Writ, which ſhall be directed unto the Sheriff where the Land is, to which the Nuſance is, he ſhall ſay in the Writ, *Videre tenementum illud.* So that the Jurors where the Land is, ſhall ſee the Land, and the Jurors in the other County ſhall ſee the Pool where the Nuſance is done.

And moreover he ſhall ſay in the Writ, *And their Names to be put in the Writ, and ſummon them by good Summoners, that they be before our beloved and faithful* R. *and* F. *and thoſe whom we have aſſociated unto them, at a certain Day and Place in the Confines of the County aforeſaid*, &c. *ready*, &c. And the Form of the Patent is ſuch:

M *The King to his beloved*, &c. *Know ye, that we have conſtituted you our Juſtices to take the Aſſiſe which* B. *hath arraigned before you by our Writs againſt* N. *touching a certain Pool heightened in* C. *in the County of* S. *to the Nuſance of his Freehold in* L. *in the County of* H. *And therefore*, &c. *that at a certain Day*, &c. *in the Confines of the Counties aforeſaid which you ſhall appoint for this Purpoſe, you take that Aſſiſe, doing thereon what to Juſtice belongs; for we have commanded our Sheriffs in the Counties aforeſaid, that at a certain Day and Place in the Confines of the ſaid Counties, whereof you ſhall give them Notice, they cauſe that Aſſiſe to come before you: In Witneſs whereof we have cauſed theſe our Letters to be made Patents. Witneſs*, &c.

(*a*) Where he may abate the Nuſance. See 8 *Ed.* 4. 5. But by *Hankſ.* he ſhall not have Treſpaſs after the Abatement; but if he brings an Aſſiſe, and the Defendant abates it pending the Writ, the Writ ſhall abate. 2 *H.* 4. 11. See 6 *Ed.* 2. *Aſſ.* 454. Pariſhioners may abate a Nuſance levied in the Churchyard, though it has remained there twenty Years. So if the Plaintiff himſelf abates it pending the Writ, the Writ ſhall abate 46 *Aſſ.* 9.

N And a Man ſhall have the like Writ, if a Man have a Way to (*a*) his Land or Houſe, and another ſtop the Way, he ſhall have an Aſſiſe of Nuſance for that Stopping; and if the Way be in one County, and the Land to which the Way is, in another County, then he ſhall have two Writs of Aſſiſe of Nuſance, to each County one, and a Patent made to certain Perſons, as is aforeſaid; and the Form of the Writ is ſuch:

21 Ed. 3. 22. 20 Ed. 3. 18. 16 Ed. 3. Fitz. Nuſance 3. Vi. 11 H. 4. 25. It ſhall be brought in Confinio Comitatus. 14 H. 8. 31. con. 33 H. 6. 27. con. 2 H. 4. 11. con. 48 Ed. 3. 13.

The King, &c. A. *hath complained unto us, that* B. *unjuſtly and without Judgment hath ſtraightened a certain Way in* B. *in your County, to the Nuſance of his Freehold in* C. *in the County of* S. *after the firſt*, &c. *and in the mean time cauſe twelve*, &c. *to view the Way, and their Names*, &c. *and ſummon*, &c.

And unto the Sheriff where the Land is to which the Way belongeth, the Writ is, *Wherefore he hath ſtraightened a certain Way in* B. *in the County of* C. *to the Nuſance of his Freehold in* S. *in your County, after the firſt*, &c. *And therefore we command you*, &c. *to view the Tenement, and their Names to be put in the Writ, and ſummon*, &c. *at a certain Day*, &c. *in the Confines of the Counties aforeſaid, which the ſame*, &c. And the Patent is ſuch:

The King to his beloved, &c. *Know ye*, &c. *to take the Aſſiſe which*, &c. *by our Writs*, &c. *touching the ſtraightening a certain Way in* B. *in the County of* Bedford, *to the Nuſance*, &c. *in* C. *in the County of* Huntingdon; *And therefore*, &c. (as above).

O And a Man ſhall have a Writ of Aſſiſe, *Wherefore he hath unjuſtly and without Judgment levied or thrown down a certain Ditch in* N. *to the Nuſance of his Freehold in* N. or *hath levied*, or *thrown down*, or *heightened*, or *lowered a certain Pool*, &c. or *hath obſtructed*, or *ſtraightened a certain Way in* N. *to the Nuſance*, &c. or *hath thrown down a certain Hedge in* N. *to the Nuſance*, &c. or *hath diverted a Water-courſe in* N. *to the Nuſance of his Freehold in* B. *after the firſt Paſſage*, &c. (as in an Aſſiſe of Common of Paſture, until) *of that Neighbourhood to view that Ditch, that Pool, that Hedge, that Way, that Water-courſe, and Tenement, and their Names to be put in the Writ, and ſummon*, &c. (as above in Common of Paſture) and the Form of the Patent is,

11 H. 4. 25. [184.]

The King to his beloved, &c. *To take the Aſſiſe which* A. *&c. againſt* B. *of a certain Ditch levied or thrown down in* N. or *of a certain Pool heightened or lowered in* N. or *of a certain Pool levied* (*b*) *or thrown down in* N. or *of a certain Hedge*

48 Ed. 3. 17.

(*a*) So that it ought to be a Way appendant; for of a Way in Groſs he ſhall have only a Writ on his Caſe, 11 *H.* 4 26. *per Cur.* and ſo of a Way to a Church, becauſe he has no Freehold in the Church, 4 *Ed.* 3. *Nuſance* 8. but *contra* it ſeems as to a Way to a Church which one has *ratione Tenuræ*. *Quære*, if not an Action on the Caſe, or a Writ of Aſſiſe at his Election.

If a Way be ſo ſtopped, that the Party can paſs but narrowly, an Action on the Caſe lies; but if it be wholly ſtopped, an an Aſſiſe. 14 *H.* 4. 31. See *Lib. Entr.* 616. Where a Tertenant plows my Way, I may have an Aſſiſe, but not Caſe, not even where it is wholly ſtopped. 2 *H.* 4. 10. 33 *H.* 6. 26. If the Tenant ſtops my Way Aſſiſe lies; if a Stranger does it, an Action on the Caſe only; and it ſeems that in an Aſſiſe, or on a *Quod permittat*, you need only name the Tenant of the Freehold where the Stoppage is. See 1 *H.* 4. 83. If I have Common appendant lying beyond a Bridge which a Prior ought to repair *ratione Tenuræ*, and the Bridge falls for Want of Reparation, I ſhall not have an Aſſiſe of Nuſance, *Quare pontem proſtravit*. 1. Becauſe there is no ſuch Writ. 2. Becauſe here is only a Neglect, and for that an Action on the Caſe lies. So if *A.* ought to ſcour a Ditch, which he does not ſcour, whereby my Land is drowned, an Action on the Caſe only lies; but if he ſtops it up, an Aſſiſe of Nuſance lies, *per Thirning*. If a Stranger ſtops my Way, an Action on the Caſe lies; but if the Tertenant does it, an Aſſiſe. 22 *H.* 6. 15.

(*b*) *Note*; An Aſſiſe *de libero Tenemento* does not lie of a Way. 34 *Aſſ.* 13. *Vide ſupra.*

Hedge levied or thrown down in N. or *of a certain Way ſtraightened or obſtructed in* N. or *of a certain Water-courſe diverted in* N. *And therefore we command you*, &c. (as above).

And for what an Aſſiſe of Nuſance lieth, appeareth by theſe Verſes:

ſatum, num, s, a,
Foſ ſtag ſepe vi diverſi curſus aquarum,
Poſcunt aſſiſam, mercatum, feria, bancum.
i. terminari coram Juſtic' aſſiſar' i. placitari in Banco.

22 H. 6. 14. And it appeareth by theſe Verſes, to ſet up a Fair or a Market unto the A.
11 H. 4. 7. Nuſance of (*a*) another Fair or Market, that he unto whoſe Nuſance that Fair or Market is ſet up, ſhall have a Writ for ſo doing returnable into the King's Bench; and the Writ ſhall be in ſuch Form:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon*, &c. P. *that he be before our Juſtices at* Weſtminſter, *&c. to ſhew wherefore he hath ſet up a certain Market*, or *a certain Fair in* I. *to the Nuſance of the free Market*, or *the free Fair of him the ſaid* A. *in the ſame Town*, or *in another Town, after the firſt Paſſage*, &c. *as he ſaith: And have there the Summoners and this Writ*, &c.

There is alſo another Form of Writ for the ſame, which is a *Quod permittat*, which is ſuch:

The King, &c. *Command* P. *that juſtly*, &c. *he permit the Biſhop of* Lincoln *to put down a certain Market in* Uppingham, *which* P. *of* M. *Father of the aforeſaid* P. *whoſe Heir he is, unjuſtly*, &c. *ſet up, to* (*b*) *the Nuſance of the free Market of* C. *lately Biſhop of* Lincoln, *Predeceſſor of the aforeſaid Biſhop, in* Luddington, *as it is ſaid, and unleſs he will do it, and the aforeſaid Biſhop ſhall make you ſecure*, &c. *then ſummon*, &c. *the aforeſaid* P. *that he be*, &c. *to ſhew wherefore*, &c.

Note; If one makes a Ditch, *&c.* croſs a River which runs to my Mill, although the Ditch be made on his own Soil: It is in my Election to have an Aſſiſe of *Novel Diſſeiſin* or of Nuſance. 32 *Aſſ.* 2.

(*a*) *Note*; Caſe does not lie, nor an Aſſiſe of Nuſance where it is *damnum ſine injuria*, as for erecting a Mill near my Mill, whereby I loſe the Cuſtom, *&c.* of the Inhabitants. 22 *H.* 6. 14. So for ſetting up a Grammar School. 11 *H.* 4. 47. But Caſe lies for ſetting up a Ferry, near an ancient Ferry on the ſame River. 22 *H.* 6. 14. See for this *Bract.* 235. *Mercatum levatum non eſt injurioſum nec proſternendum ſi ſit antiquius meo mercato.* 2. If it be erected within the third Part of twenty Miles; *viz. unius Diætæ.* 3. If ſet up for two or three Days at moſt, *meum Mercatum fuit vicinum.*

(*b*) See *Paſch.* 13 *Ed.* 3. *W. de Clynton* and *C.* his Wife, brought Nuſance againſt *A.* for levying a Market in *W.* to the Nuſance of their free Market in *S.* for that the ſaid *W.* and *C.* in Right of the ſaid *C.* had their Market every *Wedneſday* in *S.* to which Market the Country People near uſed to come, *&c.* of whom the Plaintiffs had Toll, *&c.* the Defendant levied a Market at *W.* to hold the ſame Day only two Miles from *S.* and that the Country People who uſed to come to *S.* do go to *W. Pole* defended the Tort, *&c.* and demanded the View, but it was not allowed; he alſo took Exception, for that they did not ſay their Market was elder; but not allowed; for it ſhall come by Way of Plea. 3. Exception, for that *C.* had it only for Life, and ſo ought to have another Count; *non allocat.* wherefore he pleaded, That he had not levied any Market to the Nuſance of their Market, and Iſſue was taken, and the Averment received by Award. *Note*; If the Market be on the ſame Day, it ſhall be intended a Nuſance; but if it be on another Day, it ſhall not be ſo intended; and therefore it ſhall be put in Iſſue, whether it be a Nuſance or not. 11 *H.* 4. 5. In a *Scire facias* for the King to repeal a Patent. *Note*; A Market was granted to be in *D.* on *Saturdays*, two Miles diſtant from *C.* where the King had a Market on *Tueſdays*. *Note*; The Patent commonly is *ita quod non ſit ad nocument'*; but if be a Nuſance, though it has not that Clauſe, the ſecond Patent is void againſt him to whom it is a Nuſance. 22 *H.* 6. 14.

And that Writ was granted by the Chief Juſtice and Clerks of the Chancery, by which it ſeemeth, that a Man may diſturb another to have or keep any Fair or Market unto the Nuſance of his Fair or Market.

Writs of Nuſance which are Vicontiel.

B WRITS of Nuſance which are Vicontiel, (*a*) are thoſe which do appear by the Verſes following:

rica ca gultum ges lendinum
Fab fur porta, domus, vir gur mo murus, ovile,
Et pons, tradantur hæc vicecomitibus.

And the Form of the Writ is ſuch: *The King to the Sheriff*, &c. A. *of* B. *hath complained unto us, that* B. (*b*) *hath unjuſtly levied or thrown down a certain Houſe*, or *obſtructed a certain Gulf in* N. *to the Nuſance*, &c. *in the ſame Town*, or *in another*, *after the firſt Paſſage*, &c. *into* Gaſcoigne; *And therefore we command you, that you hear that Plaint, and afterwards cauſe Juſtice to be done thereupon, that we may hear no more Clamour thereupon for want of Juſtice.*

By the Statute of 6 R. 2. the Plaintiff may chooſe to have it before the Juſtices, or the Sheriff, Regiſter 199.

C After the ſame Manner are Writs, *Of a Sheepfold, a Gate, a young Quickſet Hedge, a Mill, an Houſe of Office, and the like, levied or thrown down.* And thoſe Writs may be removed at the Suit of the Plaintiff or Defendant, out of the County into the Common Pleas by a *Pone*, with Cauſe ſhewed in the Writ, as in a Replevin of his Cattle; and the *Pone* is ſuch:

The King, &c. *Put at the Petition of the Plaintiff the Plaint which is in your County by our Writ between* A. *and* B. *of a certain Houſe levied or thrown down in* C. *by him the ſaid* B. *unjuſtly levied or wholly thrown down, as it is ſaid, and ſummon*, &c. (as in a *Pone* of Beaſts, *&c.*)

And the Rule in the Regiſter is, That if he who erected or throweth down a Houſe, Wall, or the like, dieth, that he to whoſe Nuſance it is, or his Heir, ſhall have a *Quod permittat* againſt the Heir of him who did the Nuſance, which Writs are amongſt the Writs of *Quod permittat.*

Regiſter 199.

D And a Man ſhall have an Aſſiſe of Nuſance for building of a Houſe higher than his Houſe, and ſo near his, that the Rain which falleth upon that Houſe, falleth upon the Plaintiff's Houſe.

18 Ed. 3. 22. Nuſance 1.

E (*c*) And a Man ſhall not have an Aſſiſe of Nuſance of a Way, if it be not appendant or appurtenant to his Freehold; as if a Man build a Houſe over the Way which I have to my Houſe, or to the Church, I ſhall have an Aſſiſe of Nuſance.

4 Ed. 3. Fitz. Nuſance 1. 46 Ed. 3. 23.

(*a*) See an Aſſiſe of Nuſance, or an Action on the Caſe, lies for diverting *Majoris partis Curſus aquæ, &c. Dyer* 284. and yet one ſhall not have an Action on the Caſe for ſtopping of a Way; (*Quære*) but he may have an Aſſiſe of Nuſance. *Dyer* 250.

(*b*) For levying of a Goſs to intercept the Courſe of Fiſh coming from the Sea, *uſque ad Gurgitem meam ſuperiorem.* 46 *Aſſ.* 9.

(*c*) But he ſhall have a Writ on the Caſe for ſuch Way in Groſs. 11 *H.* 4. 26. But by the better Opinion, the Writ ſhall not be *Quare levavit quandam Domum ad nocumentum liberi tenementi.* But *Quare obſtruxit vel arctavit viam ad nocumentum, &c. Et quod Juratores videant viam vel tenementum.* So if a Man builds a Houſe croſs a Watercourſe to a Mill, the Writ ſhall be *Quod divertit Curſum aquæ ad nocumentum, &c. Quære* if the Writ may not be *Quod Domum levavit ad nocumentum liberi tenementi.* 11 *H.* 4. 25.

F And in a Writ of Nuſance, the Defendant ſhall have the View, and ſhall 50 Ed. 3. 12. be eſſoined; and if afterwards he makes Default, a Diſtreſs ſhall be awarded againſt him for to anſwer, *&c.* and not ſave his Default. *P.* 42 *Ed.* 3. 9.

G And if a Man levy a Nuſance unto the Houſe of another who hath therein an Eſtate but for Term of Years, then he ſhall not have an Aſſiſe of Nuſance, [185.] but an Action upon the Caſe againſt him, becauſe he hath no Freehold: But yet it ſeemeth he may enter and abate the Nuſance.

A But his Leſſee ſhall have, 13 H. 3. Fitz. Aſſ. 437. And if a Writ of Nuſance be removed out of the County, and the Sheriff return, that the Defendant hath not any Thing, *&c.* the Party ſhall have Attachment, Diſtreſs, and no other Proceſs, *&c.* becauſe it toucheth Freehold. But in an Aſſiſe of Nuſance the Proceſs is as in Aſſiſe of *Novel Diſſeiſin.*

B And the Pariſhioners may pull down a Wall which is ſet up to their Nuſance in their Way to the Church, *quod vide 6 Ed.* 2.

C And in an Aſſiſe of Nuſance he may in his Plea ſhew the Nuſance to be to diverſe Freeholds.

D And if the Ways be ſtraightened, or the Alleys or Lanes in any Town, City or Borough Corporate be filled with Filth or Dung, or ſuch Things by which Means Infection may increaſe, then he who will ſue may procure ſuch Writ to have them cleanſed and made clean; and the Writ is ſuch:

The King to the Mayor and his Bailiffs of Oxford, *greeting: Becauſe we have received Information from Teſtimony deſerving Credit, that by Dung and Dunghills, and alſo Swine Coats and frequent Acceſs of Swine, and much other Filthineſſes which are in the Ways and Lanes of the ſaid City and the Suburbs thereof, the Air there is ſo much corrupted and infected, that a dreadful Terror ſtrikes the Maſters and Scholars dwelling in the ſame, and others converſant and paſſing there, the Benefit of wholſome Air is hindered, the Condition of Men grievouſly hurt, and other intolerable Diſadvantages, and many Dangers from ſuch Corruption are known to proceed, to the Nuſance of the Maſters and Scholars aforeſaid, and of others there converſant and paſſing, and to the manifeſt Danger of their Lives: We being unwilling any longer to endure ſuch great and intolerable Defaults, command you, that without any Delay you cauſe all the Streets and Lanes in the City aforeſaid, and its Suburbs, to be cleanſed and for the future kept clean from Dung and Dunghills, and the other Filthineſſes aforeſaid, leſt by the Corruptions or Filthineſſes aforeſaid Damage or Danger for the future happen to any Perſons by your Default, for which we ought grievouſly to attach you, as Contemners of our Mandate. Witneſs,* &c.

And upon that he ſhall have an *Alias*, a *Pluries*, and Attachment, if they do not cleanſe them, *&c.* But for Villages in the Country which are not Corporate, ſuch Writ doth not lie.

Writ de Aſſociation *in Aſſiſe, and of Writs* de Si non omnes.

E A Writ of Aſſociation is a Patent made to one or more, when an Aſſiſe of *Novel Diſſeiſin* or Certificate upon Aſſiſe of *Novel Diſſeiſin* is ſued. Then the King of his own Motion, or the Plaintiff, may ſue to have other Perſons aſſociated unto the Juſtices of Aſſiſe to take that Aſſiſe; and the Form of the Writ or Patent is ſuch:

16 Aſſ. 6, Aſſiſe 206. Note, There is one Si non omnes general, which is entred of Record, and remains with the Juſtices for their Warrant to take other Aſſiſes; and the ſpecial Si non omnes is annexed to the Record, and ſent as Parcel.

The King to his beloved and faithful C. *and* D. or, *To his beloved and faithful* F. *greeting: Know ye, that we have aſſociated you or either of you*, or *you to our beloved and faithful* A. B. *and* G. *to take the Aſſiſe of Novel Diſſeiſin which* F. *hath arraigned before the aforeſaid* A. B. *and* G. *by our Writ againſt* H. *of Tenements in* N. *nevertheleſs, ſo that if at a certain Day and Place which they the ſaid* A. B. *and* G. *ſhall appoint for this Purpoſe, you or either of you ſhall happen to be preſent, they ſhall admit you or either of you*, or *you their Companions or Companion for this Purpoſe, otherwiſe they the ſaid* A. B. *and* G. *(your Preſence or the Preſence of either of you not being expected) may proceed to the taking that Aſſiſe: And therefore we command you, that you or either of you*, or *you attend the taking that Aſſiſe, together with the aforeſaid* A. B. *and* G. *in Form aforeſaid, doing thereupon that which to Juſtice belongs, according to the Law and Cuſtom of our Realm; ſaving to us the Amercements from thence coming, for we have commanded them the ſaid* A. B. *and* G. *that they admit you or either of you*, or *you their Companions or Companion for this Purpoſe, as aforeſaid: In Witneſs whereof we have cauſed theſe our Letters*, &c.

(*a*) And upon that Patent of Aſſociation the King ſhall ſend his Writ unto the Juſtices of Aſſiſe, commanding them thereby to admit him or them, *&c.* and the Writ is ſuch:

See for the Expoſition of (*alter*) Dyer 310, 338. L. 5 Ed. 4. 11. Br. Aſſiſe 386.

The King to his beloved and faithful A. B. *and* G. *greeting: Know ye, that we have aſſociated unto you our beloved and faithful* G. *and* D. *or either of them*; or thus, *our beloved and faithful* F. *to take the Aſſiſe of Novel Diſſeiſin which* E. *hath arraigned before you by our Writ againſt* H. *and others contained in our original Writ, of Tenements in* N. or *of Common of Paſture in* N. *nevertheleſs, ſo that if at a certain Day and Place which you ſhall appoint for this Purpoſe, them the ſaid* C. *and* D. *or either of them*; or thus, *him the ſaid* F. *you admit your Companions or Companion for this Purpoſe, otherwiſe you (the Preſence of them the ſaid* C. *and* D. *or either of them not being expected*; (*b*) or thus, *of him the ſaid* F.) *may proceed to the taking of that Aſſiſe: And therefore we command you, that you admit them the ſaid* C. *and* D. *or either of them*; or thus, *him the ſaid* F. *your Companions or Companion for this Purpoſe in Form aforeſaid*; *for we have commanded them the ſaid* C. *and* D. *that they or either of them*; or thus, *him the ſaid* F. *that they ſhall attend, or he ſhall attend, together with you, as is aforeſaid: Witneſs*, &c.

(*a*) *Note*; The Juſtices may refuſe to admit the Aſſociate, except the Writ be directed to them. 5 *Ed.* 4. *Aſſ.* 459.

(*b*) Vel ſic; *Aliquis ſingulis vicib' quibus* C. *&* D. *abeſſe contigerit, &c.*

And

F And if ſeveral Aſſiſes or Certificates of Aſſiſes be ſued before ſeveral Juſtices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Juſtices to take all Aſſiſes or Certificates and Juries which are to be taken in the ſame County, the King may make an Aſſociation to the Juſtices new aſſigned, thus:

[186.] *The King to his beloved and faithful* W. *of* D. R. *of* A. *and* R. *of* P. *greeting: Know ye, that we have conſtituted you our Juſtices to take all Aſſiſes, Juries and Certificates arraigned before any of our Juſtices whomſoever by our Writs in the County of* Lincoln; *And afterwards have commanded you, that if you all could not be preſent conveniently at the taking of the Aſſiſes, Juries and Certificates aforeſaid, then two of you who ſhould happen to be preſent ſhould proceed to the taking of the ſame Aſſiſes, Juries and Certificates, according to the Law and Cuſtom of our Realm, We have aſſociated unto you our beloved and faithful* A. *to take the Aſſiſes, Juries and Certificates aforeſaid together with you; nevertheleſs, ſo that if at certain Days and Places which you or two of you ſhall appoint for this Purpoſe, it happens that he the ſaid* A. *be preſent, then that you or two of you admit him your Companion, or otherwiſe you or two of you (the Preſence of him the ſaid* A. *not being expected) may proceed to the taking of the Aſſiſes, Juries and Certificates aforeſaid: And therefore we command you,* &c.

And a Patent made to him who ſhall be Aſſociate, reciting the Patent made to the Juſtices, and the Writ of *Si non omnes*, and then ſhall ſay, *Aſſociavimus vos, &c.* and the Form of the Writ is ſuch:

The King to his beloved and faithful A. *greeting: Know ye, that whereas we have conſtituted our beloved and faithful* W. *of* D. R. *of* A. *and* R. *of* P. *our Juſtices to take all Aſſiſes, Juries and Certificates arraigned before any of our Juſtices whomſoever by our Writs in the County of* Lincoln; *and afterwards commanded them the ſaid* W. *of* D. R. *and* R. *that if they all could not be preſent conveniently at the taking of the Aſſiſes, Juries and Certificates aforeſaid, then two of them who ſhould happen to be then preſent ſhould proceed to the taking of the ſame Aſſiſes, Juries and Certificates, according to the Law and Cuſtom of our Realm, We have aſſociated you to the aforeſaid* W. R. *and* R. *and two of them, to take the Aſſiſes, Juries and Certificates aforeſaid in the County aforeſaid; nevertheleſs, ſo that if at certain Days and Places which they the ſaid* W. R. *and* R. *or two of them ſhall appoint for this Purpoſe, it ſhall happen that you be preſent, then they or two of them ſhall admit you their Companion for this Purpoſe, or otherwiſe they the ſaid* W. R. *and* R. *or two of them (your Preſence not being expected) may proceed to the taking of the ſame Aſſiſes, Juries and Certificates aforeſaid: And therefore we command you, that you attend the taking of the Aſſiſes, Juries and Certificates aforeſaid together with the ſaid* W. R. *and* R. *or two of them in Form aforeſaid, to do,* &c. *ſaving,* &c. *We have alſo commanded them the ſaid* W. R. *and* R. *that they or two of them do admit you their Companion for this Purpoſe, as is aforeſaid: In Witneſs whereof we have cauſed theſe our Letters to be made Patents. Witneſs,* &c.

L. 5 Ed. 4. 111. Br. Aſſ. 386. And afterwards when the King hath made his Juſtices of Aſſiſe by Letters A Patent; and by other Letters Patent hath aſſociated unto them another Perſon, yet he is uſed afterwards to make other Letters Patent, as well unto the Juſtices of Aſſiſe, as to thoſe whom he hath aſſociated unto them, that if they all do not come at one Time, to take thoſe Aſſiſes, Juries, and Certificates, that then thoſe who do come ſhall take the ſame Aſſiſes, Juries and Certificates: And that Patent is called a *Si non omnes*; and the Form of the Patent is ſuch:

The King to his beloved and faithful W. *of* D. R. *of* A. *and* R. *of* P. *and* A. *of* B. *greeting: Whereas we have conſtituted you the aforeſaid* W. R. *and* R. *our Juſtices to take all Aſſiſes*, &c. *arraigned*, &c. (as above, until) *and afterwards we commanded you, that if you all*, &c. *ſhould proceed ſubſequently, we have aſſociated to you, and to two of you, the aforeſaid* A. *to take the Aſſiſes, Juries and Certificates aforeſaid, in the County aforeſaid; we command you, that if you all cannot coveniently be preſent at the taking of the Aſſiſes, Juries and Certificates aforeſaid, then three or two of you (of whom we will one of you the aforeſaid* W. R. *and* R. *to be one) ſhall proceed to the taking of the ſame Aſſiſes*, &c. *according to the Law and Cuſtom of our Realm*, &c. *Witneſs*, &c.

B And theſe three Patents next before are commonly made when any Aſſiſe is ſued; as one to the Juſtices of Aſſiſes, and another Patent to the Clerk of the Aſſiſes of Aſſociation, and the Patent of *Si non omnes*, as well made to the Juſtices and the Clerk of the Aſſiſes together.

C (*a*) And if the King makes his Juſtices of Aſſiſe in any County, and afterwards he maketh an Aſſociation to them, and a Patent of *Si non omnes*, *&c.* 32 H. 6. 10. And afterwards divers Aſſiſes or Certificates of Aſſiſe remain before them not determined: The King at the next Aſſiſes may make a new Commiſſion unto other Juſtices to take all thoſe Aſſiſes and Certificates, and may make a new Aſſociation unto them by another Patent, and a *Si non omnes* alſo directed unto them.

D But a general Patent of Aſſiſe to take all Aſſiſes and Juries, *&c.* and Aſſociation lieth. 32 H. 6. 10. But *M.* 32 *H.* 6. it is holden, that an Aſſociation after another Aſſociation allowed and admitted doth not lie, nor that the Juſtices then do not admit other Aſſociation in that Writ afterwards, ſo long as that Writ and Commiſſion ſtand in Force. L. 5 Ed. 4. Br. Aſſiſe 386.

E But in a ſpecial Aſſiſe no Aſſociation ſhall be made as it is holden the ſame Year, *M.* 32 *H.* 6. for he hath not in the Writ theſe Words, *Et his quos ſibi aſſociavimus.* But the Writ is directed to the Sheriff without thoſe Words in the Writ, nor thoſe Words are not in the Patent made to the Juſtices of that ſpecial Aſſiſe.

F But if thoſe Words be in the Writ, and in the Patent made to the Juſtices, then it ſeemeth an Aſſociation ſhall be made in that ſpecial Aſſiſe, as in other. And it appeareth in the Regiſter that the other Aſſociation lieth after Aſſociation in one Writ.

G And upon a new Commiſſion made to other Juſtices, that the old Juſtices of Aſſiſe ſhall deliver their Records of the Aſſiſe unto the new Juſtices by Indenture, upon a Writ directed to them to deliver the Records.

H And a Man may ſue a Patent of Aſſociation for ſeveral Aſſiſes; and the Form of the Writ is ſuch:

(*a*) See L. 5 *Ed.* 4. 129, 137. theſe Points reſolved; *viz.* 1. That an Aſſociation may be on a ſpecial Aſſiſe, by a ſpecial Patent. 2. That by the Writ of Admittance he is not Juſtice (Aſſociate) without ſhewing alſo the Patent of Aſſociation. 3. That by the Patent of Aſſociation he is Juſtice, though there be no Writ of Admittance. 4. Though the Words of the Patent of Aſſociation ſhall be only *ad Aſſiſam hac vice capiendam*; yet his Power remains till the Aſſiſe be determined, although it depend thro' divers Adjournments.

[187.] *We have aſſociated you or either of you*, &c. *to take the Aſſiſe of Novel Diſſeiſin which* A. *hath arraigned before*, &c. *of Tenements in* N. *and to take the Aſſiſe of Novel Diſſeiſin which* C. *hath arraigned before the ſame*, &c. *againſt the aforeſaid* B. *of Tenements in the ſame Town*; *nevertheleſs, ſo that if*, &c.

And if the King make two Men his Juſtices of Aſſiſe in one County, and afterwards one of them is elſewhere in the King's Service, (*a*) ſo that he cannot intend to take thoſe Aſſiſes or Juries, then the King by Patent may make another Juſtice in his Room, to take thoſe Aſſiſes and Juries, and that Patent is in the Nature of an Aſſociation; and the Form of the Writ is ſuch: A

The King to his beloved and faithful A. *greeting: Know you, that we have conſtituted you and our beloved and faithful* G. *our Juſtices to take all Aſſiſes, Juries and Certificates arraigned before any of our Juſtices whomſoever by our Writs in the County of* L. *and the aforeſaid* G. *attends by our Command certain other Services of our's elſewhere, by reaſon whereof he has not Leiſure for the taking the ſame Aſſiſes, Juries and Certificates, as we have received Information, We have conſtituted our beloved and faithful* W. *our Juſtice in the Place of him the ſaid* G. *to take the Aſſiſes, Juries and Certificates aforeſaid together with you*; *And therefore we command you, that you admit him the ſaid* W. *your Companion in the Place of him the ſaid* G. *for this Purpoſe, in Manner aforeſaid*; *for we have commanded him the ſaid* W. *that he attend for this Purpoſe in the Place of him the ſaid* G. *together with you*, &c.

Yet he is Judge before they admit him, by Markham, L.5Ed.4.111. Br. Aſſ. 386.

And a Patent ſhall be made to him who ſhall be aſſociate unto them in the Place of *G.* which ſhall be ſuch:

The King to his beloved and faithful W. *greeting: Know you, that whereas we have lately conſtituted our beloved and faithful* A. *and* G. *our Juſtices to take all Aſſiſes*, &c. (as above, until) *as we have received Information, We have conſtituted you our Juſtice in the Place of him the ſaid* G. *to take the Aſſiſes, Juries and Certificates aforeſaid together with the aforeſaid* A. *And therefore we command you, that you attend for this Purpoſe with the aforeſaid* A. *in the Place of him the ſaid* G. *to do in Form aforeſaid*, &c. *ſaving*, &c. *for we have commanded him the ſaid* A. *that he admit you his Companion for this Purpoſe in the Place of him the ſaid* G. *as is aforeſaid: In Witneſs*, &c.

And if the King make three Juſtices in Aſſiſe, and afterwards one of them dieth, the King may make a new Patent of Aſſociation unto another to aſſociate him and the two in the Room of him who is dead, and a cloſe Writ ſhall be directed to the two Juſtices who are alive to admit him, *&c.* and it appeareth by the Writ, that if the King maketh three Juſtices to take Aſſiſes, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is ſuch: B

L. 5 Ed. 4. 111. Br. Aſſ. 286.

The King to his beloved and faithful I. *of* O. *greeting: Know you, that whereas we have lately conſtituted our beloved and faithful* I. I. *and* S. *our Juſtices to take all Aſſiſes, Juries and Certificates arraigned before any of our Juſtices whomſoever by our Writs in the County of* S. *and after the Death of the aforeſaid* S. *divers Aſſiſes, Juries and Certificates are arraigned before the aforeſaid* I. *and* I. *we, for*

(*a*) Or be dead; and *note*; A Juſtice of Aſſiſe cannot record a Nonſuit. 45 *Aſſ.* 3. Where one is made a Juſtice *ad omnes Aſſiſas capiend'*, it is good; and ſuch may take the Aſſiſes without any Re attachment ſued, although the Aſſiſe be removed. 28 *Aſſ.* 2.

certain Cauſes, have conſtituted you our Juſtice, as well to take all Aſſiſes, Juries and Certificates arraigned before the aforeſaid I. I. *and* S. *and afterwards before the ſame* I. *and* I. *as before any of our Juſtices whomſoever in the County aforeſaid together with the ſame* I. *and* I. *And therefore we command you, that you attend to take the Aſſiſes, Juries and Certificates together with the aforeſaid* I. *and* I. *in Manner aforeſaid, to do,* &c. *ſaving,* &c. *for we have commanded the aforeſaid* I. *and* I. *that they admit you their Companion for this Purpoſe, as is aforeſaid.*

C And a cloſe Writ ſhall be directed to the Juſtices to admit the ſaid Juſtice *W.* into their Society.

And the King may make Aſſociation in Juries as well as in Aſſiſes, as alſo in Attaints. And if the King make a Commiſſion to take an Attaint or other Jury, and an Aſſociation in the ſame, and after one of the Juſtices dieth, the King may make a new Aſſociation in the ſame Writ, and ſo he may make one Aſſociation after another in the ſame Writ, as appeareth by the Regiſter; and the Writ is ſuch:

The King to his beloved, &c. I. *of* M. R. *of* M. *and* I. *of* F. *greeting: Whereas we lately appointed* W. *of* O. *and you the aforeſaid* I. *of* M. *and* R. *our Juſtices, to take the Jury of twenty-four Knights which* R. *hath arraigned before the aforeſaid* W. *and you the aforeſaid* I. *of* M. *and* R. *by our Writ againſt* P. *to convict the Jurors of an Aſſiſe of Novel Diſſeiſin, which was ſummoned between him the ſaid* P. *and the aforeſaid* R. *and taken by our Writ at* H. *before the aforeſaid* W. *and you the aforeſaid* R. *of Tenements in* S. *in the County of* N. *and afterwards by our Writ we aſſociated unto you (the aforeſaid* I. *of* M. *and* R.*) you the aforeſaid* I. *of* F. *to take all Aſſiſes, Juries,* &c. *arraigned in the ſaid County together with the ſaid* W. *and you, with the aforeſaid* I. *of* M. *and* R. *or two of you, and that Jury before the aforeſaid* W. *and you the ſaid* R. *and* I. *by virtue of the Aſſociation aforeſaid, until to the taking thereof, ſtood by the Pleading, and the ſaid* W. *being now dead, we have conſtituted in the Place of him the ſaid* W. *our beloved and faithful* B. *to take that Jury together with you; We command you, that you admit the aforeſaid* B. *for this Purpoſe in the Place of him the ſaid* W. *and proceed together with him to take that Jury, according to the Law and Cuſtom of our Realm; for we have commanded the aforeſaid* B. *that he attend together with you for this Purpoſe, as is aforeſaid.*

And thereupon another Patent ſhall be made to the ſaid *B.* of Aſſociation, as before in other Caſes.

D And an Aſſociation may be made unto the Sheriff upon a Writ of Rediſſeiſin directed to him, as well as it may be upon an Aſſiſe of *Novel Diſſeiſin*, as appeareth by the Regiſter; which Writ was awarded by *W. de Harloſton.*

Furby 2 H. 4. 2. he is Officer, Judge and Commiſſioner in this Writ.

[188.]

A And although the Aſſiſe be diſcontinued for not coming of the Juſtices, *&c.* yet when the Re-attachment is ſued, the Writs of Aſſociation and of *Si non omnes* ſtand in Force; and a Re-attachment ſhall or may be ſued to revive thoſe Aſſiſes; (*a*) although there be ſeveral Adjournments of the Aſſiſes, yet the Aſſociations and Writs of *Si non omnes* ſhall ſerve for all the Aſſiſes.

12 H. 4. 19, 20. L. 5 Ed. 4. 111. Br. Aſſiſe 386. 14 Aſſ. 15. Br. Aſſ. 196.

(*a*) See it accordingly adjudged, 12 *H.* 4. 20, 22. 14 *Aſſ.* 14. be the Aſſociation in general, or the Aſſiſe taken by ſpecial Adjournments.

Writ of Rediſſeiſin.

THE Writ of Rediſſeiſin (*a*) lieth where a Man doth recover, by Aſſiſe of *Novel Diſſeiſin*, Land, Rent or Common, and the like, and is put in Poſſeſſion thereof by Verdict, and afterwards he is diſſeiſed of the ſame Land, Rent or Common by him by whom he was diſſeiſed before; then he ſhall have this Writ upon the Statute of *Merton*, *c.* 3. and the Form of the Writ is ſuch: B

The King to the Sheriff, &c. A. *and* B. *his Wife, have ſhewed unto us, that whereas* R. *formerly the Huſband of the ſaid* B. *and ſhe the ſaid* B. *in our Court, before our Juſtices laſt itinerant, at* N. *in your County*; or thus, *before our beloved and faithful* H. *and* K. *our Juſtices aſſigned to take the Aſſiſes in the County aforeſaid at*, &c. (or thus, if the Juſtices were dead) *before* H. *and his Companions lately our Juſtices aſſigned to take the Aſſiſes in the County aforeſaid at* N. *recovered their Seiſin againſt* S. *of twenty Acres of Land and ten Shillings Rent with the Appurtenances in* K. *by the Recognizance of an Aſſiſe of Novel Diſſeiſin between them*, &c. or thus, *taken between the aforeſaid* A. B. *and* S. *the aforeſaid* S. *again hath unjuſtly diſſeiſed them the ſaid* A. *and* B. *of the Land and Rent aforeſaid*; or thus, *of one Acre of Land of the Land aforeſaid*; *And therefore we command you, that taking with you the Keepers* (*b*) *of the Pleas of our Crown and twelve, as well Knights as other free and lawful Men of your County, as well of thoſe who were in the firſt Jury, as of others, you go in your own Perſon to the aforeſaid Land and Tenement from whence the Rent iſſueth, and by their Oath you diligently make Inquiſition thereof*; *and if you ſhall find that they the ſaid* A. *and* B. *are again unjuſtly diſſeiſed by the aforeſaid* S. *of the ſaid Land and Rent, then take him the ſaid* S. *and cauſe him to be ſafely kept in our Priſon, ſo that he be in no wiſe delivered from that Priſon without our ſpecial Command, and them the ſaid* A. *and* B. *to be reſeiſed of the ſaid Land and Rent, and cauſe double their Damages which they have ſuſtained by reaſon of that Rediſſeiſin, to be taxed by the Oath of the aforeſaid twelve, and to be levied without Delay of the Goods and Chattels of the aforeſaid* S. *in your Bailiwick, and to be rendered to them the ſaid* A. *and* B. *according to the Form of the Statute provided in ſuch like Caſes of Rediſſeiſin.* (*c*) *And give Notice to the aforeſaid* S. *and* D. *who now hold that Land, that they may be preſent at the making that Inqueſt, if to them it ſhall ſeem expedient. Witneſs*, &c. C

23 Aſſ. 7.

(*a*) If he diſtrains for the Rent, he ſhall have a Rediſſeiſin on a Reſcous made, without any other Seiſin. 40 *Aſſ.* 23.

(*b*) 23 *Aſſ.* 7. If there be but one Coroner in the County, he may make it, otherwiſe all muſt join. 20 *H.* 6. 17. And *note*; A Rediſſeiſin taken before the Sheriff and one Coroner is not good. Alſo *note* this Clauſe, *aſſumptis tecum*, *&c.* was omitted, and therefore the Writ abated, 26 *Ed.* 3. 57. and herein the Sheriff is Judge, 1 *H.* 4. 5. but if there are four Coroners, but one is dead, the Sheriff ought to return this. It ſeems, that if the Writ be *accedas ad Villam ubi Tenementa prædicta ſunt*, *&c.* it is erroneous, 11 *H.* 4. 6, 94. adjudged. But if the Rent iſſues out of more (many) Lands in divers Vills, it is ſufficient to take the Rediſſeiſin in one Vill only, 40 *Aſſ.* 23. but the View ought to be made of all.

(*c*) See 9 *H.* 4. 5. *Note*; The Sheriff is Judge here, and therefore it ſeems the Array is not challengeable, but the Panel is; and it ſeems that the Sheriff may receive Pleas herein, as a Releaſe, *&c.* *Kelw.* 125. 40 *Aſſ.* 23.

And

D And by that Writ appeareth, That a Man ſhall have a Rediſſeiſin againſt the Tenant, if he recover by Aſſiſe of *Novel Diſſeiſin* before Juſtices in Eyre, or before Juſtices of Aſſiſe; (*a*) and ſo if he recover in Aſſiſe of *Novel Diſſeiſin* in the King's Bench or Common Pleas, if he be rediſſeiſed, he ſhall have that Writ.

E If Huſband and Wife be diſſeiſed, and recover by Aſſiſe, and the Huſband dieth, and the Wife taketh another Huſband, and they be diſſeiſed again, by the Regiſter they ſhall have a Writ of Rediſſeiſin, although the Huſband were not diſſeiſed before; and the Writ willeth that the Sheriff inquire whether they were diſſeiſed before, and ſo the Huſband was not; but that is not material, becauſe it is the Right (*b*) of the Wife, and ſhe was diſſeiſed before. But if the Wife loſe in the Aſſiſe of *Novel Diſſeiſin*, and afterwards take Huſband, and they rediſſeiſe the Plaintiff, he ſhall not have a Writ of Rediſſeiſin; *quod vide H.* 9 *H.* 4.

1 Inſt. 154. b.
9 H. 4. 5.

F (*c*) And alſo a Rediſſeiſin lieth againſt him who committed the Rediſſeiſin, and againſt another who was not Diſſeiſor, if he be Tenant of the Land.

G And alſo if a Man recover Land by Aſſiſe of *Novel Diſſeiſin*, and after is rediſſeiſed of Parcel of the ſame, he ſhall have a Writ of Rediſſeiſin.

H And in a Rediſſeiſin againſt Huſband and Wife the Writ ſhall be thus in the End; *And the ſame* A. *double his Damages which he hath ſuſtained by reaſon of that Rediſſeiſin, to be levied of the Lands of them the ſaid* B. *and* S. *and of the Chattels of him the ſaid* B. *in your Bailiwick*; becauſe the Wife hath not any Chattel.

I And if the Sheriff will not execute the Writ of Rediſſeiſin, he ſhall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he ſhall have an Attachment againſt him to the Coroners, *&c.* and upon the ſame, Diſtreſs infinite.

K And it appeareth in the Regiſter, that a Man ſhall have a Writ of Aſſociation in a Rediſſeiſin; and the Writ is ſuch:

The King to the Sheriff, &c. *Know you, that whereas lately at the Proſecution of* N. *ſuggeſting to us, that he in our Court before*, &c. *at* K. *by our Writ recovered his Seiſin againſt* S. *&c.* (reciting the whole Writ, until) *if to him it ſhall ſeem expedient, we have aſſociated unto you our beloved and faithful* R. *to do and fulfil the Premiſſes together with you; yet ſo that if at a certain Day, which you ſhall appoint for this Purpoſe, he the ſaid* R. *happens to be preſent, then you admit him your Companion for this Purpoſe, otherwiſe (the Preſence of him the ſaid* R. *not being expected) you may proceed to do and fulfil the Premiſſes: And therefore we command you, that you admit him the ſaid* R. *your Companion for this Purpoſe, in Form aforeſaid; for we have commanded him the ſaid* R. *that he attend with you to do and fulfil the Premiſſes as is aforeſaid.*

(*a*) See 26 *Ed.* 3. 57. A Writ of Rediſſeiſin granted on a Recovery in *B. R.* ſued in Chancery, and held good by the Award of Court.

(*b*) See 9 *H.* 4. 5. And it ſeems one may have a ſpecial Writ ſuppoſing that the Wife *dum ſola* was rediſſeiſed; but not that the Huſband and Wife rediſſeiſed, *Quære poſt.* 191. it ſeems no Law; and that the Wife only ſhall be taken.

(*c*) If one recovers in an Aſſiſe and is rediſſeiſed by the Diſſeiſor, another Rediſſeiſin lies, *per Thirning*, 9 *H.* 4. 5. for Jointenancy is a good Plea in a Rediſſeiſin. 33 *Ed.* 3. *Rediſſeiſin* 7. And *note* this Judgment in Rediſſeiſin, *Quod recuperet ſeiſiniam ſuam. Raſt. Entr.* 548.

And by the Regiſter, the Writ directed to the Sheriff ſhall be cloſe, as alſo the other Writ directed unto him who is aſſociated to him, and yet the ſame is in its Nature a Patent.

And if a Man recover by Aſſiſe of *Novel Diſſeiſin*, Common of Paſture or L other Profit apprender in the Soil of another, or any Office or Corrody; if he be rediſſeiſed, he ſhall have a Rediſſeiſin; and the Writ ſhall be ſuch:

[189.] *The King to the Sheriff*, &c. A. *hath ſhewed unto us, that whereas he in our Court before our beloved and faithful* W. *and his Companions our Juſtices aſſigned to take the Aſſiſes*, &c. *at* N. *by our Writ recovered his Seiſin againſt* I. *of Common of Paſture in* S. *which belongs to his Freehold in the ſame Town, by the Recognizance of an Aſſiſe of Novel Diſſeiſin there taken thereof between them, the aforeſaid* I. *hath again unjuſtly diſſeiſed the aforeſaid* A. *of the Common of Paſture aforeſaid*; *And therefore*, &c. *you go to that Paſture, and by their Oath*, &c. (of reaſonable Eſtovers, thus) *recovered his Seiſin againſt* I. *of his reaſonable Eſtovers to be taken in three hundred Acres of Wood with the Appurtenances in* W. *which belong to his Freehold in the ſame Town, by Recognizance of Aſſiſe*, &c.

And if a Man recover by Aſſiſe of *Novel Diſſeiſin* any Land or Tenement A before the Bailiffs of any Liberty, where they demand Conuſance of Pleas before Juſtices of Aſſiſe, and the Juſtices grant the ſame, becauſe the Lands are within that Liberty, and afterwards he be rediſſeiſed of the ſame Land, then he ſhall have a Writ of Rediſſeiſin; and the Writ ſhall be ſuch:

The King to the Sheriff of Berks, *greeting:* A. *hath ſhewed unto us, that whereas he lately arraigned a certain Aſſiſe of Novel Diſſeiſin before our beloved and faithful* I. *and his Companions*, &c. *aſſigned by our Writ againſt* P. *of two Feet of Land in Length and one Foot of Land in Breadth with the Appurtenances in* W. *which ſaid Aſſiſe was returned by the ſame Juſtices into the Court of the Abbot of* Reading, *according to the Liberties granted to the ſame Abbot by the Charters of our Progenitors, formerly Kings of* England, *and our Confirmation thereof, to be pleaded before the Bailiff of the ſame Abbot, and the ſame* A. *recovered his Seiſin of the Land aforeſaid againſt the ſaid* E. *in the ſame Court, by Recognizance of an Aſſiſe of Novel Diſſeiſin there taken between them, the aforeſaid* E. *hath again diſſeiſed him the ſaid* A. *of the ſaid*, &c. (as in the firſt Writ).

And alſo a Man ſhall have a Rediſſeiſin upon a Recovery in Aſſiſe of Nuſance, *Of a Pool unjuſtly levied*, &c. or *of a Water-courſe diverted*, or *of a Way ſtraightened or obſtructed*; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. A. *hath ſhewed unto us*, &c. (until) *aſſigned, arraigned a certain Aſſiſe againſt* B. *by our Writ of a certain Pool unjuſtly levied in* N. *to the Nuſance of his Freehold in* K. *and by the Recognizance of the ſame Aſſiſe thereof between them taken at* E. *before the ſame Juſtices, that Pool levied by the aforeſaid* B. *was diſallowed and to be thrown down*; *the aforeſaid* B. *hath again unjuſtly and without Judgment levied that Pool: And becauſe this is unjuſtly and manifeſtly againſt our Peace, we command you, that taking with you*, &c. (until) *you go to that Pool and Tenement, and by their Oath make Inquiſition thereof diligently, and if you ſhall find by that Inquiſition, that he hath again unjuſtly levied the ſaid Pool, then take him the ſaid* B. *&c.* (until) *ſpecial Command, and cauſe that Pool to be thrown down without Delay, and the ſame* A. *to have double his Damages which he hath ſuſtained by reaſon of that Rediſſeiſin*, &c. *according to the Form of the Statute*, &c. (as before).

C And the like Writs are in the Regiſter of Rediſſeiſin, for the Miſturning of a Mill, or of a Way, or of an Office, and the like. Ant. 66.

And if the Sheriff do deliver any ſuch, without the ſpecial Command of the King, who are convict of ſuch Rediſſeiſins, he ſhall be grievouſly amerced, and notwithſtanding thoſe who are ſo delivered, ſhall be alſo grievouſly puniſhed, *&c.* by the Statute of *Marlebridge*, *cap.* 8.

And by the Statute of *Weſtm.* 2. *cap.* 26. he who recovereth in a Rediſſeiſin, ſhall recover double Damages; and the Defendants ſhall not be bailed by a common Writ; and by the ſame Statute is given a Writ of *Poſt-Diſſeiſin*, in which Writ he ſhall alſo recover double Damages againſt the Defendant.

D And if a Man do recover by Rediſſeiſin, and afterwards is diſſeiſed again by him by whom the firſt Rediſſeiſin was before, he ſhall have a new Rediſſeiſin; and ſo one Rediſſeiſin after another every Time he is rediſſeiſed.

E And a Rediſſeiſin ſhall be maintainable againſt any of the Diſſeiſors.

F And if a Man recover Land by Aſſiſe of *Novel Diſſeiſin*, unto which a Common is appendant, *&c.* and after he is diſſeiſed of the Common again, he ſhall have a Rediſſeiſin, *&c.* 1 Inſt. 154. b. 8 Ed. 3. Rediſſ. 6.

G And if a Man ſue a Writ of *Droit Cloſe*, and make Proteſtation in the Nature of Aſſiſe of *Novel Diſſeiſin*, and recover in that Writ, and after he is rediſſeiſed, he ſhall not have a Rediſſeiſin; for that Writ doth not lie upon an Aſſiſe at the Common Law. *M.* 14 *Ed.* 3. 1 Inſt. 154. a.

H And if all the Jurors in the Aſſiſe be dead but one, and afterwards he who recovered is rediſſeiſed, *&c.* it is a Queſtion whether he ſhall have a Rediſſeiſin, becauſe that the Statute is *Per primos Juratores & alios*, *&c.* which ſee debated in *H.* 8. 5. But it ſeemeth that the Statute makes the Law, and becauſe it is a penal Statute it ſhall be taken ſtrictly; and therefore if all the Jurors be dead but one, that he ſhall not have a Rediſſeiſin, becauſe he cannot be tried by the former Jurors; for one Juror is not a ſufficient Witneſs himſelf, to ſay that it is a Rediſſeiſin of the ſame Tenements; and therefore it ſeemeth there ought to be two Jurors to teſtify the ſame. 27 Aſſ. 7. 1 Inſt. 154. a.

I And Tenant by Statute-merchant or Staple ſhall have an Aſſiſe of *Novel Diſſeiſin* if he be ouſted; and alſo a Rediſſeiſin if he be rediſſeiſſed. 8 H. 5. 1. per Pole contr. Hankf. in Error.

And ſo Tenant by *Elegit* ſhall have an Aſſiſe of *Novel Diſſeiſin*, and a Rediſſeiſin if he be ouſted, by the Statute of *Weſtm.* 2. *c.* 18.

Writ of Poſt-Diſſeiſin. [190.]

A THE Writ of *Poſt-Diſſeiſin* is given by the Statute of *Weſtm.* 2. *c.* 26. and lieth where a Man recovereth Lands or Tenements by a *Præcipe quod reddat*, by Default or Reddition, and afterwards he is ouſted again by him againſt whom he recovered, *&c.* Then he ſhall have that Writ of *Poſt-Diſſeiſin*, and ſhall recover double Damages, and the Party ſhall be puniſhed as he ſhall be if he were attainted of Rediſſeiſin: But if he recover by Aſſiſe of *Mortdaunceſtor* or *Juris utrum*, or in thoſe Actions which paſs by Juries and Verdicts, then he ſhall have his Writ founded upon the Statute of *Merton*, *c.* 3. of *Poſt-Diſſeiſin.*

Diſſeiſin. And that Writ ſhall be directed to the Sheriff as the Writ of Rediſſeiſin ſhall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, then he may ſue forth an *Alias* and a *Pluries, vel cauſam nobis ſignifices, &c.* And if that do not any Thing, nor he return a Cauſe, then the Party may ſue an Attachment againſt the Sheriff directed to the Coroners, *&c.* and upon that a Diſtreſs; and the Form of the Writ of *Poſt-Diſſeiſin* is ſuch:

B *The King to the Sheriff,* &c. A. *hath ſhewed unto us, That whereas he, in our Court before our beloved and faithful* W. *and his Companions our Juſtices of the Bench at* E. *by our Writ recovered his Seiſin againſt* I. *of one Meſſuage with the Appurtenances in* S. *by the Conſideration of the ſame Court; he the ſaid* I. *hath ſince unjuſtly diſſeiſed the aforeſaid* A. *of the Land aforeſaid; and therefore we command you, that taking with you,* &c. (as in the Writ of Rediſſeiſin, *&c.*) *lawful Men of your County, you go,* &c. (until) *afterward unjuſty diſſeiſed him of the Land aforeſaid, then him the ſaid* I. *&c.* (until) *which he hath ſuſtained by reaſon of that Poſt-Diſſeiſin,* &c. *according to the Form of the Statute of* Weſtminſter *provided touching ſuch Poſt-Diſſeiſin; and give Notice to the aforeſaid* I. *that,* &c.

And in a Poſt-Diſſeiſin the Writ ſhall not ſay, *Tam de illis qui in prima jurata,* but in Caſe where he recovereth by Recognizance of the Aſſiſe or Jury.

5 R. 2. Br. 9. C And if a Man recover Lands or Tenements in Value againſt the Vouchee in a *Præcipe quod reddat* by Default, and afterwards that he is put in Execution by the Sheriff, the Vouchee do diſſeiſe him of the ſame Lands which he ſo recovered in Value, he ſhall have a Poſt-Diſſeiſin of that Land ſo recovered in Value againſt the Vouchee. And the Writ it ſuch:

The King to the Sheriff, &c. C. *hath ſhewed unto us, That whereas* B. *Prior of* D. *lately in our Court before our beloved and faithful* R. F. *and his Companions our Juſtices of the Bench at* Weſtminſter, *by Writ demanded againſt the aforeſaid* C. *ſeven Acres of Meadow with the Appurtenances in* I. *and he the ſame* C. *vouched to warranty thereof in the Plea aforeſaid* R. *of* S. *and by the Default which he the ſame* R. *afterwards made in the ſame Court, it was conconſidered, that the aforeſaid Prior ſhould recover his Seiſin againſt the aforeſaid* C. *in the Plea aforeſaid, that he the ſaid* C. *ſhould have of the Meadow of the aforeſaid* R. *of* S. *to the Value of the aforeſaid ſeven Acres of Meadow, by Virtue of which Conſideration, ſeven Acres of Meadow with the Appurtenances of the Meadow of the aforeſaid* R. *of* S. *in* G. *were aſſigned to the aforeſaid* C. *by our then Sheriff of* Glouceſterſhire, *by Virtue of our certain Writ of Judgment to him in this Behalf directed, the aforeſaid* R. *of* S. *afterwards unjuſtly diſſeiſed the aforeſaid* C. *of the ſaid Meadow to him aſſigned, as is premiſed; and therefore we command you, that taking with you,* &c. *twelve as well Knights as other free and lawful Men of your County, in your own Perſon you go to the aforeſaid Meadow aſſigned to him the ſaid* C. *and by their Oath diligently cauſe Inquiſition to be made thereupon, and if you ſhall find that he the ſaid* C *was afterwards unjuſtly diſſeiſed by the aforeſaid* R. *of the ſaid Meadow aſſigned to the ſaid* C. *then take him the ſaid* R. *and cauſe him to be kept ſafe in our Priſon, ſo that he be in no wiſe delivered from that Priſon, without our ſpecial Command, and cauſe him the ſaid* C. *to be reſeiſed of the aforeſaid Meadow to him aſſigned, and double his*

his Damages which he hath ſuſtained by reaſon of that Poſt-Diſſeiſin, by the Oath of the aforeſaid twelve to be taxed, and levied without Delay, of the Goods and Chattels of the aforeſaid R. *in your Bailiwick, to be rendered to him the ſaid* C. *according to the Form of the Statute provided in Caſe of ſuch Poſt-Diſſeiſin, and give Notice to the aforeſaid* R. *&c. Witneſs*, &c.

D And if the Defendant make the Default at the *Scire facias* returned, then the Sheriff ſhall take the Inqueſt by Default, and the Proceſs againſt the Jury ſhall be by Precept from the Sheriff to his Bailiff, *&c.* to ſummon twelve, *&c.* 15 H. 7. 8.

E And if a Man recover in a *Scire facias* upon a Fine, or upon a Recovery had before by Default of the Tenant, he ſhall have a Poſt-Diſſeiſin againſt the Tenant, if he be afterwards ouſted of the ſame Land; *quod vide M.* 15 *H.* 7.

F And if a Man be convict before the Sheriff upon a Rediſſeiſin and Poſt-Diſſeiſin, then he ſhall not be delivered out of Priſon without the King's ſpecial Command, and then he ought to ſue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his Fine. And thereupon he ſhall have a Writ to the Sheriff to deliver him out of Priſon; and the Form of the Writ to remove the Record is ſuch: 2 Inſt. 115.

The King to the Sheriff, &c. *On the Behalf of* Henry *of* D. *taken and detained in our Priſon of* Stafford *for a certain Rediſſeiſin made by him to* Iſabel, *who was the Wife of* Ric. *of* C. *of a Moiety of one Meſſuage with the Appurtenances in* C. *as it is ſaid, whereof he was convicted before you and the Keepers of the Pleas of our Crown in your County, by an Inqueſt made thereupon at* C. *by our Writ, we are beſought, that whereas he hath already made Satisfaction to her the ſaid* Iſabel *for the Damages adjudged to her in this Behalf, and is ready to make a Fine with us for that which to us belongs in this Behalf, according to the Form of the Statute thereof provided by the Common Council of our Realm: We willing to provide for his Delivery, and that we may be able to do to him the ſaid* H. *that which ſhall be juſt thereupon, willing to be certified upon the Record and Proceſs of the Inquiſition aforeſaid; We command you, that if Judgment be thereupon given, you then ſend the Record and Proceſs of the Inquiſition aforeſaid to us, with all Things touching them, under your Seal diſtinctly and openly, ſo that*, &c. *whereſoever*, &c. *that we may further do hereupon that which of Right*, &c. *to be done*, &c. *Witneſs*, &c. [191.]

A And that Writ of Poſt-Diſſeiſin ought to be brought by thoſe who firſt recovered, or by ſome of them, and of the ſame Land which was recovered, or of Part thereof, or againſt thoſe, or ſome of them againſt whom the Recovery was. 7 Ed. 3. 24. con.

But if a Man recover by a *Præcipe quod reddat*, and after he is diſſeiſed by him againſt whom he recovered, and the Diſſeiſor doth make Feoffment, and taketh back an Eſtate to him and another; he who firſt recovered ſhall have a Poſt-Diſſeiſin againſt him and his Jointenant, as it ſeemeth, and he ſhall be puniſhed by the Statute, if it be found againſt him.

But if he who loſeth the Land by Default or Reddition in a *Præcipe quod reddat*, do after diſſeiſe him who recovered, and make a Feoffment in Fee unto another, or for Life, it ſeemeth he who recovered ſhall have a Poſt-Diſſeiſin againſt him who diſſeiſed him again, although he be not Tenant of the

Land; for in a Writ of Poſt-Diſſeiſin the Demandant ſhall not have Judgment to recover the Land, *&c.* but the Sheriff ſhall put and reſtore the Plaintiff to his Poſſeſſion, if he find the Diſſeiſin, *&c.* and ſhall take the Defendant and keep him in Priſon until, *&c.*

And it ſeemeth, that Non-tenure is no Plea in a Writ of Poſt-Diſſeiſin for B the Defendant, but he ought for to anſwer the Diſſeiſin, *&c.* when he comes in upon the *Scire facias*, *&c.* And if he make Default upon the *Scire facias* returned, the Sheriff ſhall take the Inqueſt: *Tamen quære.*

9 H. 6. 6.
7 R. 2.
Entry 55.

Writ of Entry in the Nature of Aſſiſe, which is called, Entrie in de Quibus.

9 H. 5. 13. If this Writ be brought againſt a Parſon, he ſhall not have Aid of the Patron and Ordinary.

A Writ of *De quibus*, which is brought in the Place of an Aſſiſe, is where C a Man is (*a*) diſſeiſed of any Lands, Tenements or Rents, whereof he hath an Eſtate in Fee, then he may ſue that Writ, and the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one Meſſuage with the Appurtenances in* D. *which he claims to be his Right and Inheritance, of which the ſame* A. *unjuſtly and without Judgment diſſeiſed the aforeſaid* B. *after the firſt Voyage of Lord* Henry, *King, into* Gaſcoigne, *&c. as it is ſaid. And unleſs*, &c.

And if a Man bring a Writ of Diſſeiſin made to his Anceſtor, then the Writ is of another Form, thus:

20 Ed. 2.
Brief 851.

Command A. *that juſtly*, &c. *he render to* B. *one Meſſuage with the Appurtenances in* D. *which* (*b*) *he claims to be his Right and Inheritance, and of which the ſame* A. *unjuſtly and without Judgment diſſeiſed* C. *Father of the aforeſaid* B. (or other Anceſtor of the ſaid *B.*) *whoſe Heir he is, after the firſt Voyage of Lord King* Henry, *&c. as it is ſaid*; (or thus, in the *Per*) *which he claims*, &c. *and into which*, &c. *but by* C. *who demiſed that Meſſuage to him, who unjuſtly diſſeiſed* E. *the Father of*, &c. or *the aforeſaid* B. *&c. after the firſt*, &c. D

And in the *Per* and *Cui*, thus:

Which he claims, &c. *into which*, &c. *but by* C. *to whom* D. *demiſed that Meſſuage, who thereof unjuſtly and without Judgment*, &c. *the aforeſaid* E. *Father of the aforeſaid* B. *whoſe Heir he is*, or *the aforeſaid* B. *&c. after the firſt*, &c.

And in the *Poſt*, thus (*c*):

Which he claims, &c. *into which*, &c. *but after the Diſſeiſin which* D. *unjuſtly*, &c. *made to* E. *Father* (or other Anceſtor) *of the aforeſaid* B. *whoſe Heir he is*, or *to the aforeſaid* B. *after the firſt Voyage*, &c. *as it is ſaid*, *and whereof he complains*, &c. *and unleſs*, &c.

(*a*) See accordant 9 *H.* 5. 9. and that after a Plea to the Writ he ſhall plead over to the Diſſeiſin. 8 *R.* 2. *Brief* 928.

(*b*) See before Writ of Entry, *viz. In quibus non habet ingreſſum per* J. S. *qui dimiſit dum habuit Cuſtodiam ingr'*, 15 H. 3. Brief 878. or *per* J. S. *qui tenuit in Villenage*, 31 Ed. 3. Counterplea of Voucher 121. But ſee a Writ *Quod non habet Ingreſſum niſi per Cuſtodiam*, and it was abated; for by the Statute he might have an Aſſiſe, or a Writ of Entry *ſur Diſſeiſin.* 4 *Ed.* 2. *Brief* 790.

(*c*) *Note*; This Writ in the *Poſt* lies by the Statute of *Marlebridge*, Chap. the laſt; for before that Statute he was put to his Writ of Right. 19 *H.* 4. 39.

And it appeareth by theſe Writs, that although he bring a Writ of a Diſſeiſin made to himſelf, or of a Diſſeiſin made to his Anceſtors, that in both Caſes the Writ ſhall be *Quod clamat eſſe jus & hæreditatem ſuam.*

E And if Tenant for Life, or Tenant in Tail be diſſeiſed, they may ſue a Writ of Diſſeiſin *De quibus*, *&c.* but in that Writ it ſhall not be ſaid, *which he claims to be his Right and his Inheritance*, and in his Count he ſhall ſet forth the eſpecial Eſtate, *&c.* (*a*). 20 Aſſ. 2.

F And an Abbot, or Prior, or Maſter of an Hoſpital, or a Biſhop, ſhall have a Writ *De quibus* upon a Diſſeiſin of their Predeceſſors of Lands, Tenements, or Rent; and the Writ ſhall be ſuch:

Command A. *that juſtly*, &c. *he render to the Prior of* N. *one Meſſuage with the Appurtenances, which he claims to be the Right of the Church of him the ſaid Prior of Saint Mary of* N. *&c. and into which the ſame* A. *hath not Entry but after the Diſſeiſin, which* L. *unjuſtly and without Judgment thereof, made to* R. *ſome time Prior of* N. *Predeceſſor of the aforeſaid Prior, after the firſt*, &c. *as it is ſaid, whereof he complains*, &c.

And if it be a Rent thus:

The King to the Sheriff, &c. *Command* I. M. *that juſtly*, &c. *he render to the Prior of* C. (*b*) *three Shillings Rent, with the Appurtenances in* D. *which he claims to be the Right of the Church of him the ſaid Prior of St.* Nicolas *of* C. *and of which* W. D. *unjuſtly and without Judgment, diſſeiſed* W. *ſome time Prior of* C. *aforeſaid*, &c.

G And the Aunt and the Niece ſhall join in the Writ, upon a Diſſeiſin made to the Father of the one, the Grandfather of the other.

H And a Writ of *Entrie ſur Diſſeiſin* made unto his Anceſtors of a Stream lieth, and the Writ ſhall be, *Præcipe quod reddat unum gurgitem*, and in his Count he ſhall alledge the Eſplees in taking of Fiſhes. 13 Ed. 3. Entry 57.

I And ſo he ſhall have a Writ of *Entrie in de quibus* upon the Diſſeiſin of a Paſſage; *quod Vi. H.* 8 *Ed.* 3.

K (*c*) And if the Diſſeiſor infeoff the King, who infeoffeth another in Fee, the Diſſeiſee ſhall have a Writ of *Quibus* upon the Diſſeiſin againſt the King's Feoffee in the *Poſt*, *&c.* 22 Ed. 3. 7. Entry 11. 12 Ed. 3. 7. 23 Ed. 3. Fitz. Entry 11.

A And if Tenant in Tail bring a Writ of *Quibus* upon a Diſſeiſin made to himſelf, he may count that he was ſeiſed in his Demeſne as of Freehold, [192.] without ſhewing any particular Eſtate, or how the Eſtate began, or he may count upon the ſpecial Matter, and ſhew the Gift in Tail; *quod Vi. P.* 33 *H.* 6. 1 Ma. Dyer 101.

B (*d*) And a Man may have a Writ of *Entrie* of *Quibus*, upon a Diſſeiſin of a Common, *That he render*, &c. *Paſture for ten Sheep*, &c. which ſee *Eaſter* 4 *Ed.* 3.

(*a*) *Note*; The Writ, and alſo the Count ſhall be ſpecial; *viz.* that *A.* gave to *B.* for Life, Remainder to *C.* in Tail, whoſe Couſin and Heir *D.* aforeſaid is; but he need not ſhew how Couſin and Heir, in the Count, 21 *H.* 6. 26. and ſee there, that the Writ ſhall be *de libero Tenemento*, though the Count be of an Eſtate-tail, or for Life. *Dyer* 101.

(*b*) *Tres ſolid'*, *&c.* It may be *Quod clamat*, *&c.* as agreeing with *Reddit'*, or *Quos clamat*, and ſo refer to *ſolidos*. See 18 *Ed.* 2. *Brief* 833.

(*c*) But though the King ouſts *J. S.* without Cauſe, and grants to *B. J. S.* ſhall not have a Writ of Entry.

(*d*) *Viz.* As Pernor, but not as Tenant of the Soil; but in that Caſe is put to his *Quod permittat.* 4 *Ed.* 2. *Brief* 791, 793.

14 H. 4. 10. Hankf. 24 Ed. 3. 70.

C (*a*) And a Man ſhall not have a Writ of *Entrie* in the *Poſt*, where he may have it within the Degrees, in the *Per*, or in the *Per* and *Cui*. See *Weſt*. 1. *cap*. 40.

Yet no Præcipe will lie of a Marſh becauſe properly it cannot be rendred. 13 Ed. 3. Br. demand. 23. 39 H. 6. 8.

D If a Man diſſeiſe the Father of a Marſh, and maketh the ſame Meadow, and the Father dieth, the Son and Heir ſhall have a Writ of *De quibus* upon a Diſſeiſin made to his Father of that Meadow, and by the Writ he ſhall demand the Lands, by the Name of a Meadow, and not by the Name of Marſh (*b*).

And ſo if it be Land covered with Water, and he is diſſeiſed thereof, and the Diſſeiſor make it Meadow, the Diſſeiſee ſhall have a Writ of *Quibus*, and by this Writ demand the Meadow, and ſuppoſe that he was diſſeiſed of Meadow by the Writ, *&c.* (*c*)

v. 39 H. 5. 8. he ſhall have a Præcipe by the Name of a Houſe.

And ſo if a Man be diſſeiſed of Land, and he build a Houſe upon the ſame, he ſhall ſuppoſe the Diſſeiſin to be of a Houſe, *&c.* *Quære* of this (*d*).

And the Writ of *Quibus* upon Diſſeiſin of an Office is ſuch:

E *The King to the Sheriff*, &c. *Command* H. *Abbot of* Peterborough *that juſtly*, &c. *he render to* B. *the Office of Serjeant in the Abby of* Peterborough, *and the Rent of twenty-four Loaves of Bread, forty Flaggons of Ale, and ſix Meſſes of Meat with the Appurtenances, in the City of* Peterborough, *which he claims to be his Right and Inheritance, and of which the ſame Abbot unjuſtly and without Judgment hath diſſeiſed him*, &c.

F And he who cometh in unto any Land by (*e*) Recovery, or by Election, or by Succeſſion, or by Diſſeiſin, the Writ ſhall be brought againſt ſuch Perſon always in the *Poſt*.

(*a*) One may falſify the Degrees by Plea after a *Prece partium*. 14 *H*. 4. 39. F. *Brief* 248.

(*b*) 33 *Ed*. 3. *Entry* 40. 4 *Ed*. 3. 47. 4 *Ed*. 3. *Feoffments* 79. 39 *H*. 6. 8. F. *Entry* 8.

(*c*) See *Trin*. 3 *Jac*. 1. *B. R. Rot*. 10.

(*d*) In Dower the Demand was of the third Part of two Mills, the Tenant pleads, that at the Day of the Writ purchaſed, they were two Tofts, and he was put to ſay, *and yet are*; tho' the Plaintiff had only ſaid they are two Mills, and did not ſay that they were the Day of the Writ purchaſed; for it is ſufficient for him if they were Mills at the Time of the Demand, and ſo in an Aſſiſe; *contra* in a *Præcipe*. See 1 *H*. 5. 11. 4 *Co*. 87. *Dyer* 47. 14 *Aſſ*. 12. See *Paſch*. 33 *Eliz*. *Rot*. 1308. *Hayes* and *Allen*; the Huſband aliens the Wife's Houſe, the Wife abates the Houſe and builds a new one, whereof the ſide Walls ſtand on the Tenant's Land; yet the Wife, ſhall have a *Cui in vita* of the Houſe, becauſe it is a Houſe at the Time of the Demand; yet ſhe ſhall not recover the whole Houſe. 33 *Ed*. 3. *Entry* — 4 *Ed*. 3. *Feoffments* 79.

(*e*) See where a Recovery makes a Degree. 5 *Ed*. 2. *Entry* 66. 7 *Ed*. 3. 62. *Cui in vita* 11. See 11 *Ed*. 3. *Entry* 56. where a Recovery againſt the Party ſhall not remit to the Degrees.

Writ of Dum fuit infra Ætatem.

G A Writ of *Dum fuit infra Ætatem* lieth, where an Infant maketh a Feoffment in Fee of his Lands, or for Life, or a Gift in Tail, when he cometh of full Age, he may have that Writ to recover thoſe Lands or Tenements which were ſo aliened by him, *&c.* And within Age he may enter into the Land, and take it back again, and by his Entry he ſhall be remitted to his Anceſtor's Right; but yet he ſhall not maintain that Writ until he be of full Age of twenty-one Years, for the Words of the Writ do ſo ſuppoſe, *While he was under Age*, by which it appeareth that he is not within Age at the Time of the Writ, *&c.* and alſo the Writ is ſuch; *Who is of full Age, as* H *he ſaith*, by which it appeareth that he ought to be of full Age (*a*), when that he bringeth that Writ; and the Writ is ſuch:

39 H. 6. 42. In 46 Ed. 3. 34. A Dum fuit infra ætatem was admitted of a Rent, and yet by ſome the Gift is void; but the Delivery of the Deed is not void. Poſt. 202.

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *who is of full Age, as he ſaith*, *two Meſſuages*, &c. *which the ſame* B. *while he was under Age demiſed to him, as he ſaith, and unleſs he will do it*, &c. (And ſo in the *Per*) *Into which the ſame* A. *hath not Entry but by* C. *to whom the aforeſaid* B. *demiſed them.* (And in the *Poſt*, thus) *Into which*, &c. *but after the Demiſe which the aforeſaid* B. *while he was under Age thereof made to* W. *as it is ſaid, and whereof he complains, and unleſs*, &c. But that Clauſe, *Who is of full Age*, ſhall not be put in the Writs of *Per*, *Cui* or *Poſt*, but only in the firſt Writ, by Grant made by the Demandant to the Tenant.

I And if a Man bring this Writ upon the Alienation of his Anceſtors, then this Clauſe, *Who is of full Age*, ſhall not be in the Writ, and yet the Infant ſhall have a *Dum fuit infra Ætatem* of a Seiſin, and Alienation of his Anceſtor during his Nonage; and the Writ ſhall be ſuch:

Command A. *that*, &c. *he render to* B. *one Meſſuage with the Appurtenances*, &c. *which he claims to be his Right*, &c. *and into which the ſame* A. *hath not Entry but by* C. *the Father* (*or other Anceſtor of the ſaid* B.) *whoſe Heir he is*, *who demiſed it to him while he was under Age*; or thus, *which he claims*, &c. *and into which*, &c. *but by* C. *to whom* D. *Grandmother of the aforeſaid* B. *whoſe Heir he is*, *while the ſame* D. *was under Age*, &c. (And in the *Poſt*) *which he claims*, &c. *and into which*, &c. *after the Demiſe which* D. *the Aunt or Couſin of the aforeſaid* B. *whoſe Heir he is*, *while ſhe the ſame* D. *was under Age*, *thereof made to* H. *as it is ſaid, and whereof he complains*, &c.

K (*b*) And if two Infants be Jointenants, and they alien the Land during their Nonage, at their full Age they ought not to ſue forth ſeveral Writs of *Dum*

34 H. 6. 3. Davers ac. 19 H. 6. Ac de cui in vita.

(*a*) See 13 *Ed.* 3. *Dum fuit infra* 3. Where a *Dum fuit infra ætatem* was brought of Tenements in *Glouceſter*, and the Defendant pleads that when one knew how to count twelve Pence, or to meaſure an Ell of Cloth, he might alien by the Cuſtom of the Vill; and that the Plaintiff was of ſuch an Age when he leaſed, that he knew how, *&c.* and becauſe he did not ſet forth the Age in certain as to the Number of Years, ſo that the Party might have joined Iſſue thereon, Judgment was given for the Demandant.

(*b*) See 18 *Ed.* 2. *Brief* 831. and if the Writ ſuppoſes an Entry into the Moiety by his Demiſe, where it was into the Whole, both the one Writ and the other is falſe. *N. Br.* 128. 141.

fuit infra Ætatem, becauſe their Nonage is the Cauſe of the Action which is ſeveral, for the Nonage of the one is not the Nonage of the other, nor the Alienation of the one, the Alienation of the other.

See 14 Ed. 3. Brief 282. L And if the Huſband and Wife alien the Wife's Lands during the Nonage of the Huſband and Wife, the Wife at her full Age, after the Death of the Huſband, ſhall have *Dum fuit infra Ætatem* for ſuch Alienation. *M.* 14 *Ed.* 3.

14 Ed. 3. ibid. But if the Huſband were of full Age, and the Wife within Age, and they both alien the Wife's Lands, and then the Huſband dieth, it is a Queſtion, whether the Wife ſhall have a *Dum fuit infra Ætatem* (*a*), and I conceive that ſhe ſhall have a *Dum fuit infra Ætatem*, or a *Cui in vita*, as ſhe pleaſeth, for when they join in a Feoffment of the Land, it ſhall be ſaid the Feoffment of the Wife, until ſhe diſagree; for if the Huſband and Wife make a Gift in Tail, or a Leaſe for Life of the Wife's Lands rendring Rent, if the Huſband dieth, the Reverſion is only in the Wife, and ſhe may accept the Rent, and the ſame ſhall bind her and her Heirs; and then if ſhe will not accept the Rent, but, becauſe ſhe was within Age at the Time of the Feoffment, ſhe will bring a *Dum fuit infra Ætatem*, it ſeemeth ſhe ſhall not be received ſo to do; for by that Suit ſhe affirmeth that ſhe made the Feoffment, and then [193.] it ſhall not be ſaid the Feoffment of the Huſband only, but the Feoffment of the Wife alone after the Death of the Huſband, if ſhe affirm that to be her Feoffment; and by the *Dum fuit infra Ætatem* ſhe doth affirm the ſame, and that ſhe made the Feoffment during the Coverture; and on the other Side it may be ſaid, that ſhe doth not affirm the ſame to be a lawful Feoffment made by her. And alſo by the Feoffment of the Huſband the Entry of the Wife ſhall be taken away; but by the Feoffment of the Wife during her Nonage, his Entry ſhall not be taken away; and therefore *quære* the Law, &c.

* *Writ of* Cui in vita.

* This Writ is now out of Uſe, becauſe by Stat. 32 H. 8. the Alienation of the Huſband does not toll the Entry of the Wife.

A THE Writ of *Cui in vita* lieth, where the Huſband doth alien in Fee the Right of Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or Grant for Life, or in Tail: Then, after the Death of the Huſband, the Wife ſhall have *Cui in vita contradicere non potuit:* And the Writ lieth, where the Wife hath an Eſtate for Life, or in Tail, and the Huſband alieneth that Eſtate and Title of the Wife's, then the Wife after his Death ſhall have that Writ.

39 H. 6. 38. Priſ. contr. Vide 16 H. 7. 8, 9. (*b*) And if the Wife do not bring the Writ during her Life, then if ſhe had an Eſtate in Fee-ſimple, her Heir ſhall have a Writ which is called *Sur cui in vita* after her Death. And if the Wife have an Eſtate in Tail, and her Huſband alien, and make a Feoffment of that Eſtate; then if the Wife dieth, her Heir ſhall have a Writ of *Formedon* in the Deſcender to recover

(*a*) 14 *Ed.* 3. *Aid* 27. 21 *H.* 6. 24. 22 *H.* 6. 24. 7 *Ed.* 4. 7. *contra.* (*b*) 4 *Eliz.* 246. *b.* 46 *Ed.* 3. *Cui in vita* 23. 46 *Ed.* 3. *Age* 76.

that Eſtate, and not a Writ of *Sur cui in vita*; for thoſe Writs of *Cui in vita*, and *Sur cui in vita*, are Writs founded upon the Common Law, and of an Eſtate in Fee-ſimple; for there was not other Eſtate at the Common Law which would deſcend, but a Fee-ſimple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he ſhall have a Writ of Eſcheat.

B (*a*) And ſo by the Common Law, if a Man gives Lands to one and the Heirs of his Body, *&c.* if he dieth without Heirs of his Body, the Lord by the Common Law ſhall have a *Formedon* in the Reverſion of that Eſtate for want of Iſſue of him to whom the Gift was made; but yet the Donor ſhall have an Eſtate in Fee-ſimple, as I think, and that appeareth by the Statute, which ſaith, *De tenement' quæ multoties dantur ſub conditione*; by which Words it appeareth, that the Gift had a Condition implied therein; ſo that it ſhall revert for want of ſuch Iſſue, and by reaſon of the Tenure reſerved, *&c.* but it doth not appear by the Statute that he ſhall have an Eſtate-tail of other Nature than the Eſtate which was by the Common Law; and the Form of the Writ of *Cui in vita* is ſuch:

A Feme ſole made a Deed of Feoffment, but always after continued Seiſin of the Land; after ſhe took Huſband, who delivered the Land to the Party to whom the Deed was made; the Feme may have a Cui in vita; becauſe ſhe did not execute the Feoffment by Delivery of the Land. 34 Ed. 2. Fitz. Cui in vita 21. Plo. Com. 29 & 39. 12 Ed. 4. 3.

C *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* B. *who was the Wife of* D. *one Meſſuage with the Appurtenances in* N. *which* (*b*) *ſhe claims to be her Right and Inheritance, and that the ſame* A. *hath not Entry but by the aforeſaid* D. *ſome time the Huſband of her the ſaid* B. *who demiſed it to him, whom ſhe in her Life-time could not contradict, as ſhe ſaith.*

N. Br. 131.

D And if ſhe hold in Frank-marriage, and the Huſband alien, then the Writ ſhall be, *Which ſhe claims to be her Right and Marriage, and into which the ſame* A. *&c. but by* C. *to whom the aforeſaid* D. *ſome time the Huſband of her the ſaid* B. *demiſed it*, &c.

E And this Writ of *Cui in vita* may be in the *Per*, *Cui* and *Poſt*, and in the *Poſt* the Writ ſhall be,

And into which the ſame A. *hath not Entry but after the Demiſe which the aforeſaid* D. *ſome time the Huſband of her the ſaid* B. (*c*) (*whom ſhe in her Life-time could not contradict*) *thereof made, as it is ſaid, and whereof ſhe complains*, &c. *and unleſs*, &c. or thus, *which ſhe claims to be her Right, of the Gift of* S. *who infeoffed her the ſaid* B. *thereof, and into which*, &c.

(*a*) 4 *Eliz.* 246. 46 *Ed.* 3. *Adjudged* 76.

(*b*) *Note*; If the Feme was in of a Fee-ſimple by Purchaſe, then the Writ ſhall be *Quod clamat eſſe Jus ſuum*; or *Quod clamat eſſe Jus ſuum de Dono:* And *note*; *Jus* is always intended a Fee-ſimple; yet it ſeems that in the Caſe of Purchaſe, *Quod clamat eſſe jus & hæreditatem*, is not abateable, though properly *Hæreditat'* is intended by Diſcent, and not by Purchaſe in this Writ. 7 *H.* 4. 5. 30 *H.* 6. 38. *Quod clamat eſſe Jus & hæreditatem ſuam*, though it was by Purchaſe. 10 *H.* 6. 9.

(*c*) *Note*; If the Writ be in the Degrees the Words *Cui in vita*, *&c.* are put in the End; but if in the *Poſt*, in the Middle; and therefore if the Writ be, *Poſt dimiſſionem quam*, *&c. vir ipſius* B *inde fecit cui ipſa*, *&c.* the Writ ſhall abate; for the Words relate to the next Antecedent. 16 *Ed.* 3. *Brief* 652.

11 Aſſ. 11: Br. Aſſ. 167. 16 H. 7. 8, 9. 4 Ed. 3. 8. 39 H. 6. 38, &c.

F And if the Huſband and Wife purchaſe jointly, and the Huſband alieneth all in Fee and dieth, the Wife ſhall have a Writ in this Form (*a*): *Which ſhe claims to be her Right of the Gift of* I. *who thereof infeoffed her the ſaid* B. *and the aforeſaid* C. *ſome time her Huſband, and into which*, &c.

Note; The Statute of Weſt. 2. c. 3. extends to give this Account, as well for Recovery before the Statute, as after.

G And if ſhe have an Eſtate to her and the Heirs of (*b*) her Body, and of the Body of her Huſband begotten, then the Writ is; *Which ſhe claims to hold to her and the Heirs of her Body, and of the Body of the aforeſaid* D. *ſome time her Huſband, iſſuing, of the Demiſe of* I Or thus, *Which ſhe claims to be her Right of the Demiſe which* I. *thereof made to the ſame* B. *and the aforeſaid* D. *ſome time her Huſband, and to the Heirs of her the ſaid* B. And there the Huſband ſhall have a joint Eſtate with the Wife for the Term of her Life.

5 Ed. 2. Cui in vita 23.

H And if the Wife claim the Lands in Dower, then the Writ ſhall be: *Which ſhe claims to be her Dower* (*c*) *of the Gift of* D. *her firſt Huſband, or ſecond Huſband, and into which*, &c. *but by the ſaid* C. *the ſecond Huſband of her the ſaid* B. *or the third Huſband*, &c. *who demiſed it to him*, &c.

And if ſhe hold for Term of Life of Dimiſſion, then the Writ ſhall be, *Which ſhe claims to hold for her Life of the Demiſe which* I. *thereof made to the ſame* B. *and to the aforeſaid* D. *ſome time her Husband, for the Life of them the ſaid* B. *and* D.

2 Ed. 4. 13. 4 Ed. 2. Cui in vita 22. 20 H. 6. 28. 11 Ed. 3. Brief 477. Note the Caſe of Weſt. 9 Ed. 4. 16.

I And if the Huſband and Wife loſe by Default the Wife's Lands, after the Death of the Huſband ſhe ſhall have a *Cui in vita* for to recover thoſe Lands ſo loſt by Default; but if a Man recover by a *Ceſſavit* Lands of the Wife by Default of the Huſband and the Wife upon a *Ceſſer*, during the Marriage had betwixt them; if the Huſband dieth, the Wife ſhall not have a *Cui in vita* upon that Recovery; *quod vide Trin.* 4 *Ed.* 2.

11 Ed. 3. 9. 36 Ed. 3. Cui in vita 2.

K If the Huſband and Wife, and a third Perſon purchaſe jointly, and the Huſband alieneth all in Fee and dieth, the Wife, as it ſeemeth, ſhall have a *Cui in* (*d*) *vita* of a Moiety, being the third Jointenant; but it ſeemeth ſuch Alienation is a Severance of the Jointure, *quod vide Paſ.* 16 *Ed.* 3. *Cui in vita*

(*a*) If the Writ ſuppoſe *Ex Dono A.* and *B.* it is a good Plea, that *A.* did not give. 4 *Ed.* 2. *Brief* 795.

(*b*) 48 *Ed.* 3. 8. 16 *H.* 7. 8. 4 *Ed.* 2. *Brief* 795. *contr.* 22 *Ed.* 45. And *Note*; The Writ ſhall be in the ſame Form, tho' he be Tenant after Poſſibility, and not *quod clamat tenere* for his Life, *de Dono, &c.* 18 *Ed.* 3. 27.

(*c*) *Ex Dimiſſione* I. *qui inde ſeoffavit præd'* *B.* is good. 18 *H.* 6. 24.

(*d*) *Rex præcipe, &c. quæ clamat tenere ad vitam ſuam ex dimiſſione quam* I. S. *fecit eidem* H. the Demandant, *& prædicto* B. her Huſband, and *C. Filio prædictor'* H. and B. *& hæredib' de corpore ipſius* B. *&c. in quam non habet Ingreſſum, ſi non per prædict'* B. *quondam virum ipſius* H. *qui illam ei dimiſit Cui ipſam, &c.* and held, 1. That he need not alledge the Eſplees but in Perſon of the Demandant, and not in *C.* who does not claim from him. 2. It need not ſhew that *C.* is dead, but it ſhall come in by the Shewing of the Tenant; whereupon *Trewin* ſaid, *C.* is in Life, and demanded Judgment of the Writ; but it ſeems to be only to the Action, and that only as to a Moiety, *per Shard.* For of a Moiety, it is a Diſſeiſin to *C.* but this ſeems to be doubted; for by *Shard*, it has been ſeen, that the Feme and *C.* have joined in an Aſſiſe. 11 *Ed.* 3. *Cui in vita* 9. See 36 *H.* 6. *Entry congeable* 54. 36 *Ed.* 3. *Cui in vita* 20. where it is ſaid, that the Feme ſhall not have a *Cui in vita* living *C.* becauſe they may join in a Writ of Right; but *per Moret*, ſhe ſhall have a *Cui in vita* of the Whole, and ſee 35 *Aſſ.* 13. If the Stranger ſurvives, he may enter into the Whole

L in the Abridgment: And if the Huſband alien the Corody in Fee, which the Wife hath, it ſhall not be any Diſcontinuance, but the Wife may demand her Corody.

A If the Huſband and Wife exchange the Land of the Wife for other Lands,
if the Wife agree unto the Exchange, after the Huſband's Death ſhe ſhall not
B have a *Cui in vita*. And if the Wife do accept of the Parcel of the Land in
Dower, of which ſhe hath a *Cui in vita*, by that Acceptance ſhe ſhall be barred
in her *Cui in vita* of the Reſidue.

[194.]

9 Ed. 4. 16.

If the Huſband and Wife loſe by Default in Waſte, no Cui in vita; the Reaſon is, becauſe no Land is in Demand in, &c. Writ, 36 Ed. 3. She ſhall have a Cui in vita of no Part during the other's Life. 36 Ed. 3. She ſhall have a Cui in vita, that is, of a Purchaſe during the Coverture, that he ſhall not have a Cui in vita after the Death of the others; but for, &c. he may. 10 Ed. 4. 2.

2 Ed. 2. Cui in vita 19. 8 Ed. 2. ibid. 25.

8 Ed. 2. Cui in vita 28. The Huſband gave the Land of the Wife to I. who gave other Land to the Huſband and Wife, and to the Son of the Huſband, and to the Heirs of him who ſurvived, and that was pleaded by Exchange in Bar, in a Cui in vita; and holden in Bar. 20 Ed. 3. Cui in vita 10.

So if ſhe accept a Rent where ſhe and her Huſband make a Feoffment. 21 H. 6. 24.

2 Ed. 2. Cui in vita 117. 8 Ed. 2. 28. Perk. 58. 4 Co. 5. b. 8 Ed. 3. 12. 10 Ed. 3. Cui, &c. 32.

If Huſband and Wife be Jointenants before the Coverture, and the Huſband alieneth all the Land, and dieth, ſhe ſhall not have a *Cui in vita* but for a Moiety. But if they be Joint Purchaſors during the Coverture, and he alien all the Land, and dieth, his Wife ſhall have a *Cui in vita* of the whole Land, becauſe that during the Coverture as to Purchaſe, they are but one Perſon in Law. And the Writ of *Sur cui in vita* lieth for the Heir of the Wife, where the Huſband alieneth all the Land in Fee; and the Writ is ſuch:

19 H. 6. 45. 21 Ed. 2. 9. 17 Aſſ. 310. 17 Ed. 3. cont. where Acceptance is made, for ſhe is remitted.

Command A. *that*, &c. *he render to* B. *one Meſſuage with the Appurtenances in*
N. *which he claims to be his Right and Inheritance, and into which*, &c. *but by*
C C. *ſome time the Huſband of* D. *Mother of the aforeſaid* B. *whoſe Heir he is, who*
demiſed it to him, whom ſhe the ſaid D. *in her Life-time could not contradict, as*
he ſaith; *and unleſs*, &c.

And in the *Per* and *Cui*, thus:

Which he claims, &c. *and into which*, &c. *but by* C. *to whom* D. *ſome time the Huſband of* E. *Aunt, Siſter or Couſin of the aforeſaid* P. *whoſe Heir he is*, &c. *demiſed it to him, whom ſhe the ſaid* D. *in her Life-time*, &c.

And in the *Poſt* the Writ ſhall be thus:

But after the Demiſe which I. *ſome time the Huſband of* C. *Mother of the aforeſaid* B. *and Aunt of the aforeſaid* M. *whoſe Heir he is, whom the ſaid* C. *in her Life-time could not contradict, thereof made, as he ſaith, and whereof he complains*, &c. *and unleſs*, &c.

D And by that Writ appeareth, that the Aunt and the Niece may join in a Writ of *Sur cui in vita*, upon an Alienation made by the Huſband, their common Anceſtor; or upon a Recovery had againſt the Huſband and Wife, who was the common Anceſtor to them, if the ſecond Huſband alien the Lands of the Wife, and he and his Wife die, the Iſſue of the Wife and the firſt Huſband ſhall have a *Sur cui in vita* againſt the Alienee; although the ſecond Huſband be living, if he were not intitled to be Tenant by the Cur-

teſy; but if the ſecond Huſband be intitled to be Tenant by the Curteſy, then the Iſſue of the firſt Huſband ſhall not have a *Sur cui in vita* during the E
Life of the ſecond Huſband.

8 Ed. 2. And a *Sur cui in vita* was maintainable of a Rent, *M.* 12 *Ed.* 3. And in a F
Cui in vita 26. *Cui in vita* the Grant or Gift alledged in the Writ is not traverſable. G

44 Ed. 1. If a Man giveth Lands to a Woman to marry her, and they marry, and H
Fitz. ib. 30. afterwards the Huſband alieneth the Lands, and dieth, the Wife ſhall have a
5 Ed. 3. 37. Cui in vita 13. *Cui in vita* of thoſe Lands given her by her Huſband.
49 Ed. 3. 20.
Quære. But 50 Ed. 3. 6. Act. 5 Ed. 2. Cui in vita 25.

Writ de ſine aſſenſu Capituli.

THE Writ of *Sine aſſenſu Capit'* lieth, where a Dean, Biſhop, Prebendary, I Abbot, Prior, or Maſter of an Hoſpital, alien the Lands which they have in the Right of their Houſe, Abbey or Priory, without the Aſſent of their Convent, or their Chapter or Brethren, *&c.* He who is the Succeſſor ſhall have that Writ, which is ſuch, and may be in the *Per*, *Cui* or *Poſt:*

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *Biſhop of* K S. *one Meſſuage with the Appurtenances in* N. *which he claims to be the Right of the Church of him the ſaid Biſhop of Saint* Mary *of* S. *and into which the ſaid* A. *hath not Entry but by* H. *to whom* R. *ſome time Biſhop of* S. *the Predeceſſor of the aforeſaid now Biſhop demiſed it, without the Aſſent and Will of his Chapter, as he ſaith*, &c.

And for a Maſter of an Hoſpital the Writ ſhall be,

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *Warden of the Hoſpital of Saint* Mary Magdalen *of* Lincoln, *one Meſſuage*, &c. *which he claims to be the Right of his Hoſpital aforeſaid, and into which the ſaid* A. *hath not Entry but by* D. *ſome time Warden of the Hoſpital aforeſaid, who demiſed it to him without the Aſſent and Will of the Brethren and Siſters of the ſame Hoſpital, as he ſaith; and unleſs*, &c.

And for a Prebend the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *Prebendary of the Prebend of* D. *in the Church of the bleſſed* Peter *of* York, *one Meſſuage*, &c. *in* A. *which he claims to be the Right of his Prebend, and into which*, &c. *but after the Demiſe which* R. *of* B. *lately Prebendary of the Prebend aforeſaid, Predeceſſor of the ſaid Prebendary, without the Licence and Will of the Archbiſhop of* York *and the Dean and Chapter of the Church aforeſaid, thereof made to* W. *of* R. *as he ſaith, and whereof he complains*, &c.

And for the Prior of Saint *John of Jeruſalem* in *England* lieth a Writ upon an Alienation of his Predeceſſor, thus:

That he render to B. *Prior of the Hoſpital of Saint* John of Jeruſalem *in* England, *&c. which he claims to be the Right of his Church of Saint* John of Jeruſalem *in* England, *and into which he hath not Entry but by* W. *ſome time Prior of Saint* John, *&c. Predeceſſor of the aforeſaid now Prior, who demiſed it without the Aſſent of the Chapter, as he ſaith; and unleſs*, &c.

And the Proceſs in theſe Writs are Summons, Grand Cape and Petit Cape. 21 H. 6. 9.

L (*a*) And hereby it appeareth, that a Prebendary ſhall have a Writ *de ſine aſſenſu Capituli*; by which it ſeemeth that he hath a Fee-ſimple in the Prebend; and yet one Prebendary may enter upon the Alienation of his Predeceſſor.

And alſo a Prebendary ſhall have a *Juris utrum* upon an Alienation of his [195.] Predeceſſor, by which it ſeemeth he hath not a greater Eſtate than as Parſon: But yet it ſeems (*b*) reaſonable that he have this Writ *de ſine aſſenſu Capituli*; becauſe that he, the Biſhop, and the Chapter are but one Body, and are as one Body, although the Poſſeſſions be ſevered and divided among them; and every one of them is enabled to bring an Action of his own Poſſeſſion in his own Name.

A And a Man may have a Writ of *ſine aſſenſu Capituli* againſt the ſame Perſon by ſeveral *Præcipes* in the Writ of Lands in ſeveral Towns, and upon Demiſes of his ſeveral Predeceſſors, and it ſhall be good; *quod vide H.* 33 *Ed.* 3.

B And if the Prebendary, or a Biſhop, or Abbot be diſſeiſed, and afterwards he releaſeth to the Diſſeiſor; it ſeemeth the ſame is an Alienation upon which he may have a Writ *de ſine aſſenſu Capituli*; for if the Diſſeiſor die ſeiſed after the Releaſe made, the Succeſſor hath not any Remedy but by this Writ, or by a Writ of Right; but if the Diſſeiſor doth not die ſeiſed, then it ſeemeth the Succeſſor may enter upon the Diſſeiſor, notwithſtanding the Releaſe of his Predeceſſor, for by the Releaſe no more paſſeth than he may rightfully releaſe, *&c.*

Writ of Aſſiſe of Mortdaunceſtor.

C THE Writ of Mortdaunceſtor lieth, where my Father or Mother, Brother or Siſter, (*c*) Uncle or Aunt, or Nephew or Niece, dieth ſeiſed of any Lands, Tenements or Rents, or of a Corody or other Rents, as Hens or Capons, iſſuing out of other Lands of an Eſtate in Fee-ſimple: Now if a Stranger after their Deaths abate in that Land, Rent or Profit, I who am his Heir ſhall have this Writ of Aſſiſe of Mortdaunceſtor.

D And if the Anceſtor were ſeiſed, the Day that he died, of any Lands or Rents, or other like Things, of an Eſtate in Fee-ſimple, although that a Stranger entereth and diſſeiſeth him of that Land or Rents the Day that he dieth, ſo that he dieth not ſeiſed of the ſaid Land or Rents, *&c.* yet I who am his Heir ſhall have that Aſſiſe of Mortdaunceſtor, becauſe the Writ doth not ſuppoſe that my Anceſtor died ſeiſed; but the Writ ſaith, *Ready to take Cogniſance upon Oath, whether* W. *the Father*, &c. *was ſeiſed in his Demeſne as of Fee, on the Day when he died*, &c. and the ſame is ſufficient although he dieth not ſeiſed; and the Form of the Writ is ſuch:

(*a*) See the contrary adjudged, *Dyer* 240. for Provoſtſhip of *Wells*. See 2 *H.* 4. 5. *Litt.* 145.

(*b*) In 3 *Ed.* 3. a Prebend had a Writ of Entry *ſine aſſenſu Capituli*, and the Writ was *non habuit Ingreſſum*, from whence it follows, it is a Lay Fee; and how the Writ ſhall be, ſee *Statham Tit. Prebend. Caſe* 2.

(*c*) And not Coſinage, for ſuch Writ will abate, if of the Seiſin of the Uncle.

The King to the Sheriff of S. *greeting: If* A. *ſhall make you ſecure*, &c. *then* E *ſummon*, &c. *twelve free and lawful Men of the Neighbourhood of* N. *that they be before our Juſtices at the firſt Aſſiſe, when they ſhall come into thoſe Parts*, or *before our Juſtices at* Weſtminſter *on the Octave of*, &c. or *before our beloved and faithful* D. *and* E. *and thoſe whom we have aſſociated unto them, at a certain Day and Place, whereof they the ſaid* D. *and* E. *ſhall give you Notice, ready to recognize by Oath, if* W. *Father of the aforeſaid* A. or *Mother, Siſter, Brother, Uncle or Aunt, was ſeiſed in his (or her) Demeſne as of Fee, of one Meſſuage and one Yard-land with the Appurtenances in* N. *the Day whereon he died, and if he died after the Coronation of Lord King* Henry; (*a*) *and if the ſame* A. *be his next Heir: And in the mean time let them view the ſaid Meſſuage and Land, and cauſe their Names to be put in the Writ, and ſummon by good Summoners* B. *who now holds the aforeſaid Meſſuage and Lands, that he may be there to hear that Recognizance; and have there the Summoners and this Writ. Witneſs*, &c.

10 Ed. 2. Formedon 55. Plow. Com. 239. If a Man hath Iſſue a Son, and his Wife dieth; and he taketh another Wife, and hath Iſſue a Son, and Lands are given to him and his ſecond Wife in ſpecial Tail; before the Statute De donis, if the Stranger had abated, no Mortdaunceſtor lieth.

And upon that Writ he needs not have any ſpecial Patent, for the general F Patent made to the Juſtices ſhall ſerve for that Writ. And if the Writ be, *That he be before our beloved and faithful* D. *and* E. *and thoſe whom we have aſſociated unto them*, then they uſe to have a ſpecial Patent directed to the ſame Juſtices, *&c.* But if the Juſtices be the Juſtices of Aſſiſe in the ſame County, then their general Patent ſhall ſerve for that Aſſiſe, as well as if they had a ſpecial Patent; and the ſpecial Patent is ſuch:

The King to his beloved and faithful D. *and* E. *greeting: Know ye, that we have conſtituted you our Juſtices, together with thoſe whom we have aſſociated unto you, to take the Aſſiſe of Mortdaunceſtor which* A. *hath arraigned before you by our Writ, of one Meſſuage and one Yard-land in* N. *And therefore*, &c. as in the Patent of Aſſiſe of Novel Diſſeiſin.

30 Aſſ. 24. Br. Attaint 72. 50 Aſſ. 4. Br. Attaint 84. And a Man may have an Aſſiſe of Mortdaunceſtor of ſeveral Rents againſt G ſeveral Perſons in ſeveral Counties, and in the End of the Writ ſhall be ſeveral Summons againſt the Tenants; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *If* A. *and* B. *ſhall make you ſecure, then ſummon twelve free*, &c. *ready to recognize by Oath, if* W. *Father of the aforeſaid* A. *and Grandfather of the aforeſaid* B. *was ſeiſed*, &c. *of ten Shillings Rent with the* 13 H. 4. 17. *Appurtenances in* N. *and if he died*, &c. *and if they the ſaid* A. *and* B. *are next*, &c. *and in the mean time let them view the Tenement from whence the Rent cometh, and cauſe their Names*, &c. *and ſummon by good Summoners* S. *who de-*

forceth

(*a*) See that in a *Mortdaunceſtor* by an Infant, of the Seiſin of his Father or Mother, the Writ ſhall be good, tho' thoſe Words are omitted; *contra* in a Writ of *Ayle.* 13 *H.* 4. 17. *Weſtm.* 1. *c.* 32. 30 *Aſſ.* 25. and ſee where theſe three Articles are to be inquired, *viz.* 1. If the Tenant pleads to the Writ and Vouches, and on ſuch Dilatory they are at at Iſſue, and found againſt all, yet the Points of the Writ are to be inquired, *Et ſi petens deficit in uno cadit in omnibus.* 2. It ſeems, if the Dying ſeiſed be denied, yet the other Points ſhall be inquired, for this is no Plea in Bar. 3. If a Bar be pleaded, and found for the Plaintiff, there the Points of the Writ ſhall not be inquired. 17 *Ed.* 3. 28. 39 *Aſſ.* 13. 9 *Aſſ.* 3. 8 *Aſſ.* 17. *Dyer* 311.

forceth them of ſix Shillings of the Rent, and T. *who deforceth them of four Shillings of the Rent, that they may be then there,* &c.

And by this Writ it appeareth, that the Aunt and the Niece ſhall join in Aſſiſe of Mortdaunceſtor, and that is by the Statute of *Glouceſter, cap.* 6.

H (*a*) And if the Heir who bringeth Aſſiſe be within Age, he ſhall not find Pledges; and therefore the Form of the Writ ſhall be of another Form, and ſhall not ſay, *If* A. *ſhall make you,* &c. but thus:

The King to the Sheriff, &c. *Summon,* &c. *twelve free and lawful Men,* &c. *if* W. *Father of the aforeſaid* A. *who is under Age, as he ſaith, was ſeiſed,* &c. And ſhall not ſay in the Writ, *And if he died after the Coronation,* &c. becauſe it appeareth by the Age of the Demandant; but if many Siſters be Demandants, and ſome of them be within Age, and ſome of full Age, then the Writ ſhall be in the common Form, as if all were of full Age (*b*).

If a Man go beyond the Sea in Pilgrimage, and dieth there, his Heir ſhall [196.] have a Writ of Mortdaunceſtor of another Form, thus:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure,* &c. *ſummon twelve,* &c. *if* W. *Father of the aforeſaid* A. *was ſeiſed in his Demeſne,* &c. *of the Rent of one Clove with the Appurtenances in* N. *the Day he took* (*c*) *his Pilgrimage towards the Holy Land,* or *towards* Jeruſalem, or *towards Saint* James, *in which Journey he died, as it is ſaid, and if he took that Journey after the Coronation of,* &c.

A And in that Writ it ſufficeth, if he were ſeiſed the Day he went out of the Land, and took the Sea, although it was not the Day of his Death. And if the Father enter into Religion, and be profeſſed, the Son ſhall have a Mortdaunceſtor, if the Stranger abate in the Land; the Writ ſhall be, *Si* W. *Pater, &c. die quo habitum Religionis aſſumpſit, in quo habitu profeſſus fuit, ut dicitur; & ſi habitum illum aſſumpſit poſt Coronationem, &c.* Poſt. 211. G. 3 Ed. 4. 3. 9 H. 5. 9.

B If a Man have a Corrody to him and his Heirs, if he die ſeiſed, or was ſeiſed thereof the Day of his Death, his Heir ſhall have an Aſſiſe of Mortdaunceſtor thereof, if it be taken from him; and the Writ ſhall be,

The King to the Sheriff, &c. *If* W. *ſhall make you ſecure,* &c. *then ſummon,* &c. *twelve free,* &c. *of the Venue of the City of* Weſtminſter, *that they be,* &c. *ready,* &c. *if* L. *Mother of the aforeſaid* W. *was ſeiſed in her Demeſne as of Fee of forty Shillings Rent, and of the Rent of ſixty-two Loaves, three Flaggons of Wine, twenty Flaggons of Ale and thirty Meſſes of Meat, with the Appurtenances in the City of* Weſtminſter, *the Day whereon he died; and if he died,* &c. *and if the ſaid* W. *&c. and in the mean time let them view the Tenement from whence the Rent cometh, and ſummon,* &c. T. *Abbot of* Weſtminſter, *and Friar* R. *of* B. *and Friar* K. *of* S. *Monks of the ſaid Abbot, who deforce him of the Rent aforeſaid, that they may be then there,* &c.

C And the Order to ſet the Parcels in the Writ ſhall be as in a Writ of Right.

(*a*) *Note*; A Bill of Privilege is not *ſi fecerit te ſecurum, &c.* and yet the Demandant ſhall find Pledges to proſecute, or elſe it is Error. *Dyer* 288. See 4 *Inſt.* 150.

(*b*) 13 *Ed.* 3. *pl.* 677. 9 *Ed.* 2. *Brief* 852.

(*c*) And in ſuch Caſe, if the Writ be in common Form, it ſhall abate, 9 *Ed.* 2. *Mortdaunceſtor* 852. but a Writ of Ayle or Coſinage ſhall be general in ſuch Caſe. 13 *Ed.* 3. *Brief* 677.

D And a Man ſhall have a Certificate upon this Writ, and alſo Writs of Aſſociation, and *Si non omnes*, as he ſhall have in Aſſiſe of Novel Diſſeiſin.

E And by the Statute of *Glouceſter*, if Tenant by the Curteſy alien his Wife's Inheritance, and dieth, the Heir of the Wife ſhall have an Aſſiſe of Mortdaunceſtor, if he have not Aſſets by Deſcent by the Tenant by the Curteſy, and the ſame ſhall be as well where the Wife was not ſeiſed of the Land the Day of her Death, as where ſhe was ſeiſed thereof, for that Writ is given by the Statute.

F If the Lord have the Ward of the Heir of his Tenant, and when he cometh of full Age the Guardian will not ſuffer him to enter into the Land, the Heir ſhall have an Aſſiſe of Mortdaunceſtor againſt the Guardian, by the Statute of *Marlebridge*, *cap.* 16.

8 Aſſ. 13.
Br. Default and Appurtenance 88.

G And the Proceſs in Mortdaunceſtor is Summons againſt the Party, and if he make Default at the Day of the Aſſiſe Return, then the Plaintiff ought to ſue a Reſummons; and if he make Default again, the Aſſiſe ſhall be taken by his Default.

(*a*) And if a Man vouch in Aſſiſe of Mortdaunceſtor, and at the firſt Day the Vouchee make Default, then the Reſummons ſhall iſſue forth againſt him: And ſo if the (*b*) Tenant or Vouchee at the firſt Day be eſſoined; and afterwards at the Day given by the Eſſoin, the Tenant or Vouchee make Default, a Reſummons ſhall be awarded. But if the Tenant at firſt Day be eſſoined, as in the King's Service, and afterwards make Default at another Day, the Aſſiſe ſhall be taken by his Default, *&c.*

H And if the Writ of Mortdaunceſtor be brought by ſeveral Summons againſt ſeveral Tenants, then the Aſſiſe may be taken one againſt one Tenant, and another againſt the other Tenant; *quod vide* 3 *Ed.* 3. *Itin. North.*

I (*c*) And a Mortdaunceſtor doth not lie for Lands deviſable by Will, becauſe the Title may fall to another, who is not Heir by the Will of the Anceſtor, *&c.* and yet the Writ is true, that he was ſeiſed the Day he died; *quod vide* 23 *Ed.* 3. *Lib. Aſſ.*

33 Ed. 3. Mortdaunceſtor 33.
1 H. 3. Mortdaunceſtor 51.
7 H. 4. 23.

K And if a Man be ſeiſed in Tail, the Remainder to his right Heirs, and afterwards he die ſeiſed without Iſſue of his Body, and a Stranger abateth, it is a Queſtion if the Heir ſhall have an Aſſiſe of Mortdaunceſtor. And *Anno* 21 *Ed.* 3. *Itin. Suff. M.* 5 *H.* 4. the Opinion of ſome is, that if the Remainder be to his right Heirs, that then he ſhall not have an Aſſiſe of Mortdaunceſtor: But if a Gift in Tail be made unto one, the Remainder to him and his right Heirs, that then he ſhall have an Aſſiſe of Mortdaunceſtor, becauſe he hath the Remainder in Fee to him and his Heirs: But it ſeemeth he ſhall

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(*a*) Where the Tenant vouched a Foreigner, in order to remove the Plea, and the Vouchee was returned ſummoned, and made Default, the Parol was remanded. 3 *Aſſ.* 10. 28 *Aſſ.* 29.

(*b*) The Tenant was eſſoined at the Day, and afterward made Default, no Reſummons was, but the Jury taken by Default. 10 *Ed.* 3. 7. 45 *Ed.* 3. 23. 4 *H.* 6. 23. 18 *Ed.* 4. 8. *Note*; It was a common Eſſoin, yet ſee 8 *Aſſ.* 13. a Reſummons granted, and ſee 22 *Aſſ.* 79.

(*c*) *Rot. Parl.* 21 *Ed.* 3. *n.* 47. a Petition *inde.* 22 *Aſſ.* 78. For Land *in Burgo de Scarborough.* 35 *Aſſ.* 1. 40 *Aſſ.* 2.

not have an Aſſiſe of Mortdaunceſtor in the one Caſe nor in the other; for the Words of the Writ are, *If* W. *Father of*, &c. *was ſeiſed in his Demeſne as of Fee the Day wherein he died*, and that he was not, for he was ſeiſed in Demeſne *as of Fee-tail*, and not in Demeſne as of Fee, and therefore the Jury cannot find that he was ſeiſed in his Demeſne as of Fee, for of the Demeſne he was ſeiſed in Tail. *Quære* of that.

L And if the Anceſtor dieth ſeiſed, and hath two Siſters his Heirs, one of them ſhall not have an Aſſiſe of Mortdaunceſtor againſt the other, for this Writ lieth againſt Strangers, and not againſt Privies in Blood. 10 Ed. 3. Darrein Preſentment 13.

And ſo in Gavelkind, one Brother ſhall not have a Mortdaunceſtor againſt the other for the Privity of Blood, but he ought for to ſue a *Nuper obiit* againſt his Brother, or one Siſter againſt the other, *&c.*

And *H.* 13 *H.* 3. *Itin. Suff.* the youngeſt Brother had a Mortdaunceſtor againſt a Stranger, and ſhall recover where the eldeſt went beyond Sea, although he were not dead, becauſe eighteen Years paſſed ſince the eldeſt went beyond the Seas.

(*a*) And *H.* 13 *Ed.* 2. it was adjudged accordingly, where the younger Brother recovered in Aſſiſe of Mortdaunceſtor, where the eldeſt went beyond the Sea, and was alive,

Writ of Nuper obiit.

A THE Writ of (*b*) *Nuper obiit* lieth, where the Grandfather, Father, Brother, Uncle or other Anceſtors of the Demandant dieth ſeiſed of Lands, Tenements or Rents of an Eſtate in Fee-ſimple, and after their Death, one of the Heirs of the ſame Anceſtor doth enter and deforce the Demandants; now he, or thoſe who are ſo diſſeiſed, ſhall have that Writ againſt the (*c*) Coparcener; and that Writ lieth for one Coheir againſt the others, or for divers Coheirs againſt many, as the Caſe is, and it ought to be where the common Anceſtor dieth ſeiſed of Land, *&c.* of an Eſtate in Fee-ſimple; for if one Siſter do deforce another Siſter of Land, whereof their Anceſtor died ſeiſed of an Eſtate in Tail, her Siſter ſhall have a Formedon againſt the Siſter who deforced her, *&c.* and not a *Nuper obiit.* And the Form of the Writ is ſuch: [197.] 7 Ed. 3. 15.

B *The King to the Sheriff*, &c. *If* A. *and* B. *ſhall make you ſecure*, &c. *then ſummon*, &c. C. *that he be before our Juſtices at* Weſtminſter *ſuch a Day*, &c.

(*a*) If my younger Brother enters after the Death of my Father, I ſhall (not) have a Mortdaunceſtor againſt him, nor any other Action but Entry, and if he diſturb me, I may have an Aſſiſe. *Plow.* 306. *N. B.* 109.

(*b*) And it ſeems, that every Parcener ought to be named in the Writ, *viz.* Tenant or Demandant. *Trin.* 16 *Ed.* 3.

(*c*) And ſhe ſhall have Judgment to hold in Severalty. 21 *R.* 2. *Judgment* 227.

to ſhew wherefore ſhe deforceth the aforeſaid A. *and* B. (*a*) *of their proportionable Part which falleth to them of the Inheritance which was* W.'s *of* N. *the Father, Mother, or other Anceſtor of the aforeſaid* A. B. *and* C. *whoſe Heirs they are, and who lately died, as it is ſaid*, &c. *And have there the Summoners and this Writ*, &c. *Witneſs*, &c.

And the Writ may be brought by an Aunt againſt her Siſter and her Niece; and then the Writ ſhall be ſuch:

The King to the Sheriff, &c. *If* A. *and* B. *his Wife, ſhall make you ſecure*, &c. *then ſummon*, &c. C. *and* D. *that they be*, &c. *to ſhew wherefore they deforce the aforeſaid* A. *and* B. *of the proportionable Part of her the ſaid* B. *which falleth to her of the Inheritance which was* E.'s *in* N. *Mother of the aforeſaid* B. *and* C. *and Great Grandmother of the aforeſaid* D. *whoſe Heirs they are, and who lately died, as it is ſaid: And have*, &c.

Br. Entry congeable 122. collects, that the Stranger gains nothing of the Freehold by that Entry; quod nota.

And that Writ lieth betwixt Coheirs in Gavelkind, as well as between Women who are Coparceners; and if one Coparcener be deforced by another Coparcener and a Stranger, ſhe ſhall have a *Nuper obiit* againſt the Coparcener, and by the Rule in the Regiſter, that Non-tenure ſhall not abate the Writ. *Vide ſupra* L. C

And alſo by the Rule in the Regiſter, in a *Nuper obiit* Non-tenure of Parcel of the Thing demanded ſhall not abate the Writ. D

7 H. 6. 8.

(*b*) And if two of the Coparceners enter after the Death of their Anceſtor, and deforce the third Siſter, and afterwards they make Partition betwixt them, and then one of the two alieneth her Part unto a Stranger in Fee, yet the third ſhall have a *Nuper obiit* againſt her two Siſters notwithſtanding that Alienation, and ſhall recover the third Part thereof, whereof the Coparcener who aliened not was ſeiſed, *&c.* E

And for to recover the third Part of the other Coparcener, which is in the Hand of the Stranger, ſhe ought to ſue an Aſſiſe of (*c*) Mortdaunceſtor in her Name, and in the Name of her other Coparceners, *&c.* or a Writ of Aiel, as the Caſe is.

16 H. 7. 1. per Keble, by the Diſclaimer the Demandant is put to his Aſſiſe of Mortdaunceſtor; alſo he is barred of his Damages in the Nuper obiit.

(*d*) And if one Coparcener do infeoff a Stranger in Fee, and taketh back an Eſtate to him in Fee, or for Life, yet it ſeems a *Nuper obiit* lies againſt him by the other Coparcener, if he do not diſclaim in Blood, *M.* 2 *Ed.* 2. and it ſeems reaſonable. But *M.* 21 *Ed.* 3. and *M.* 45 *Ed.* 3. 7 *H.* 6. 8. it is holden the contrary: But ſeveral Tenancy or Non-tenure is no good Plea in a *Nuper obiit* for the Privity of Blood; but if he claim by Purchaſe, or diſclaim in the Blood, it is a good Plea. F

And a *Nuper obiit* lieth betwixt Siſters of the Half-blood. G

(*a*) And therefore, if the Demandant is ſeiſed of Part of the Lands deſcended, although they lie in another Town, *&c.* the Writ ſhall abate. 4 *Ed.* 2. *Age* 117.

(*b*) Neither Non-tenure nor ſeveral Tenancy are Pleas in a *Nuper obiit.* 7 *H.* 6. 8.

(*c*) *A.* and *B.* bring a *Nuper obiit* againſt *C. D.* and *E.* *A.* does not appear, *C.* and *D.* appear by Attorney, and *E.* appears in Perſon, and ſays, that he is the Villain of *I. S.* And by *Wilby* and others, this ſhall abate the Writ, and the Plaintiff ſhall be put to his *Mortdaunceſtor* againſt *I. S.* and the others. 18 *Ed.* 3. 55. accordant. 15 *Ed.* 3. *Brief* 322.

(*d*) 11 *H.* 4. 23. 21 *Ed.* 3. *Nuper obiit* 14. 21 *Ed.* 3. 32. 45 *Ed.* 3. 19. 30 *Ed.* 1. *Nuper obiit* 18.

H And if a *Nuper obiit* be brought of the Seiſin of the Grandfather, Darrein Seiſin in the Father is no Plea, without alledging a Dying ſeiſed in the Father, *&c.*

I A *Nuper obiit* lieth of the Seiſin of the Great Grandfather.

K And the *Nuper obiit* ought to be brought by that Coparcener who is deforced, *&c.* againſt all the other Coparceners, although that ſome of them have nothing in the Tenancy.

L And it appeareth, *T.* 4 *Ed.* 2. that the *Nuper obiit* lieth of the Seiſin of his Father, if the Father were ſeiſed the Day that he died, or the Day before, for that amounteth to a Dying ſeiſed, *&c.*

4 Ed. 2. Nuper obiit 10.

M And if one Siſter hath Iſſue a Son, and dieth, and the Son doth infeoff a Woman in Fee of all the Land, and afterwards marries her; the *Nuper obiit* doth not lie by the other Coparcener againſt the Huſband and Wife; but there he may bring a Mortdaunceſtor in his own Name, and in the Name of the Huſband againſt the Huſband and Wife. *Anno* 18 *Ed.* 2. *Itiner. Canc.*

8 Ed. 2. Nuper obiit 13.

N A Villain and his Wife ſhall not have a *Nuper obiit* againſt his Wife's Coparcener, becauſe he is not infranchiſed by the Marriage of one of the Coparceners which was one of his Lords, to whom he was Villain before.

16 H. 3. 5. Nuper obiit 17.

O And if the Father give Lands in Frank-marriage to his Siſter, and dieth ſeiſed in Fee of other Lands, ſhe ſhall not have a *Nuper obiit* againſt her Siſter for the Lands in Fee-ſimple, unleſs ſhe will put the Lands which were given in Marriage in Hotchpot, *&c.*

P A *Nuper obiit* lieth of a Corody.

Q And Voucher, and the View, do not lie in the *Nuper obiit.*

R And the Aunt and the Niece ſhall join in a *Nuper obiit* againſt the other Siſter or Niece, *&c.*

Writ of Quare ejecit infra Terminum.

S THE Writ *Quare ejecit infra Terminum* lieth, where a Man leaſeth Lands unto another for Years, and after he entereth and maketh a Feoffment in Fee of the ſame Lands to a Stranger, or for Life; the Leſſee ſhall have that Writ *Quare ejecit infra Terminum* againſt the Feoffee or Leſſee for Life.

11 H. 6. 6.

T And in that Writ he ſhall recover his Term again, and his Damages alſo, if the Term be not ended; and if the Term be ended, he ſhall recover all his Damages.

If the Term expire pendent the Writ, yet the Writ ſhall not abate.

U And the Proceſs in that Writ is Summons, Attachment and Diſtreſs infinite, and not Proceſs of Outlawry, becauſe the Writ is not *Vi & Armis*; and the Form of the Writ appeareth after, *&c.*

[198.]

A But this Writ of *Quare ejecit infra Terminum* was deviſed (as it is ſaid) by a wiſe Man called *William Moreton*, and for this Cauſe: For if a Man leaſe Lands for Years, and after he ouſt his Leſſee, and after he hath put him out, he make a Feoffment of the Land unto a Stranger in Fee; now the Leſſee cannot have a Writ of *Ejectione firmæ* againſt him who is the Feoffee, becauſe he did not put him out, for which in that Caſe the Leſſee had no other Remedy

medy but to enter again into the Land. And if the Feoffee do then put him out, the Leſſee may have againſt him an *Ejectione firmæ vi & armis* for the Wrong done him, and before Entry made by the Leſſee, he had not Remedy againſt the Feoffee: And therefore by the Equity of the Statute of *Weſt. c.* 24. (As often as hereafter it ſhall happen in the Chancery, that in one Caſe a Writ is found, and in the like Caſe falling under the ſame Law, and wanting the ſame Remedy, *&c.* let the Clerks of Chancery agree, *&c.*) and by reaſon of that Statute was this Writ deviſed.

21 Ed. 4. 10, 30. 1 H. 5. 4. &c.

B But yet if the Leſſor put out the Leſſee, and preſently make a Feoffment in Fee, ſo as the Feoffee be Party or Privy to the Ouſter of the Leſſee, then the Leſſee ſhall have a Writ of *Ejectione firmæ vi & armis* againſt the Feoffee, becauſe he is Party to the Ouſter, and to the Wrong done unto him; and the Writ followeth:

The King to the Sheriff, &c. *If* A. *ſhall make you ſecure*, &c. *then ſummon* B. *that he be*, &c. *to ſhew wherefore he deforceth the aforeſaid* A. *of one Meſſuage with the Appurtenances in* N. *which* C. *demiſed to him for a Term which is not yet paſſed, within which Term the ſame* C. *ſold that Meſſuage to the aforeſaid* B. *by reaſon of which Sale he the ſaid* B. *hath ejected the aforeſaid* A. *from the Meſſuage aforeſaid, as it is ſaid: And have*, &c.

C And the like Writ lieth where the Son and Heir of the Leſſor maketh a Feoffment, *&c.* and the Feoffee ouſted the Leſſee.

D And if the Leſſee granteth over his Term, and afterwards the Leſſor maketh a Feoffment of the Land unto a Stranger in Fee; now the ſecond Leſſee ſhall have that Writ, *&c.* and the Writ ſhall be,

Wherefore he deforceth the aforeſaid B. *of one Meſſuage*, &c. *which* R. *(to whom* L. *demiſed it for a Term which is not yet paſſed) demiſed to the ſame* B. *for the ſame Term, within which Term he the ſaid* L. *ſold that Meſſuage*, &c.

And ſo if four let a Houſe to *A.* for Years, who granteth over his Eſtate to *B.* and afterwards two of the Leſſors die, and the Survivor maketh a Feoffment unto *C.* in Fee, *B.* ſhall have a *Quare ejecit infra Terminum* againſt the ſaid Feoffee, and the Writ ſhall recite the ſpecial Matter.

E And if a Man do leaſe Land for Years, and a Leſſor doth ſuffer a Recovery to be againſt him upon a feigned Title, who entereth, yet it ſeemeth the Leſſee ſhall have this Writ of *Quare ejecit infra Terminum*, *&c.* And the Words of the Writ are, *By reaſon of which Sale*; and yet the ſame is not properly a Sale, but thoſe Words are but of Form. But before the Statute of 21 *H.* 8. *c.* 15. it ſeemeth that the Tenant for Years could not have falſified the Recovery had againſt his Leſſor.

35 H. 8. 52. &c. 36 H. 8. 63. L. H. 8. fol. 74. 5 H. 7. 7, 37.

F And if a Man leaſe Lands for a Term of Years, and afterwards dieth without Heir, and the Lord by Eſcheat enter and puts out the Termor, it is a Doubt whether he ſhall have a *Quare ejecit infra Terminum* againſt the Lord by Eſcheat; but it ſeemeth reaſonable that he ſhould have it.

11 H. 6. 7. Babington.

G And ſo if the Villain leaſeth Lands for Years, and after the Lord of the Villain enters, and puts out the Termor, the Leſſee ſhall have that Writ. And ſo if a Man leaſe Lands for Years, and afterwards a Stranger put out the Leſſee, and diſſeiſeth the Leſſor, and afterwards the Leſſor releaſeth unto him, it ſeemeth the Leſſee ſhall have the Writ *Quare ejecit infra Terminum* againſt the Diſſeiſor, *&c.*

And.

I And *Quare ejecit infra Terminum* lieth as well againſt the Leſſor, as againſt his Feoffee; *quod vide H.* 19 *H.* 6. 21 Ed. 4. 30. contr.

K And it ſeemeth that the Sale ſuppoſed in the Writ is not traverſable, but only the Ejectment, &c. And if ſo, then it ſeemeth the Writ lieth againſt the Lord by Eſcheat, or againſt the Lord of the Villain who putteth out the Termor, &c. 46 Ed. 3. 4. contr. 18 Ed. 2. pl. 7.

But an *Ejectione firmæ* lieth againſt the Lord of the Villain, if he put the Termor out of his Leaſe made by his Villain, before Entry made by the Lord into the Land. And ſo an *Ejectione firmæ* lieth againſt the Lord by Eſcheat, if he ouſt the Termor of the Leaſe made by the Tenant, &c.

And for the Book of 19 *H.* 6. it appeareth that it is in the Election of the Leſſee to ſue a Writ of *Ejectione firmæ*, or a Writ of *Quare ejecit infra Terminum* againſt the Leſſor or his Heir, or againſt the Lord by Eſcheat, or againſt the Lord of the Villain, if they put the Termor out of his Term, &c. Ant. F.

Writ of Ex gravi Querela.

L THE Writ of (*a*) *Ex gravi Querela* lieth, where a Man is ſeiſed of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are deviſable by Will Time out of Mind, &c. Now if one who had Lands or Tenements there, doth deviſe thoſe Lands or Tenements unto another in Fee-ſimple or in Fee-tail, he to whom the Deviſe is made ſhall have this Writ of *Ex gravi Querela* for to execute that Deviſe. 1 Inſt. 111. a.

Note, That if a Town hath paid 15, it is no ancient Town that may deviſe,

Per 40 Aſſ. 41. 39 Aſſ. Br. Aſſ. 355. This Writ is not incident to Lands deviſable. Quære, If a Deviſe of a Rent out of the Land deviſable be within the Benefit of this Writ. 26 H. 8. &c. or 5, and 4 & 5 Mar. Dyer 140.

M And if a Man do deviſe ſuch Lands or Tenements unto one in Tail, the Remainder over in Fee unto a Stranger, if the Tenant in Tail enter and be ſeiſed by Force of the Intail, and afterwards dieth without Iſſue, he in the Remainder ſhall have ſuch Writ of *Ex gravi Querela* to execute that Deviſe. Poſt. 200. b.

A And ſo if a Man deviſe Lands or Tenements unto one in Tail, and afterwards the Tenant in Tail dieth without Iſſue of his Body; the Heir of the Donor, or he who hath the Reverſion of the Land, ſhall have the Writ of *Ex gravi Querela* in the Nature of a Formedon in the Reverter, to recontinue the Poſſeſſion of the Land to him who hath the Reverſion. [199.] And firſt for Land B deviſed in Tail within the City of *London*; the Form of the Writ for the Heirs of the Deviſee in Tail, is ſuch:

The King to the Mayor and Sheriffs of London, *greeting: We have received Information from the grievous Complaint of* I. *Daughter of* E. *and* M. *Siſter of the ſame* I. *that whereas according to the Cuſtom hitherto obtained and uſed in the ſame City, it is lawful for every Citizen of the ſame City to deviſe his Tenements in*

(*a*) And it ſeems, that this Writ does not lie without a ſpecial Cuſtom, although by Cuſtom, the Land be deviſable. 39 *Aſſ.* 6. See *contra* 40 *Aſſ.* 41.

40 Aſſ. 41. Br. Caſtrum 38.

Locus imperfectus: See the next Writ.

the ſame City by his Teſtament, as he may his Chattels by his laſt Will, to whomſoever he will, and S. *ſome time a Citizen of the City aforeſaid, by his Teſtament and laſt Will deviſed four Shops with the Appurtenances, being in the ſame City,* or *four Meſſuages and ten Shops with the Appurtenances,* &c. *to* E. *to have the ſame to him and the Heirs of his Body iſſuing,* R. *and* S. *his Wife, of two Meſſuages and three Shops thereof, and* F. *of three Shops thereof unjuſtly deforce the aforeſaid* I. *and* M. *the Daughters and Heir of the ſaid* E. *to the great Expence and Grievance of them the ſaid* I. *and* M. *and contrary to the Will of the Teſtator aforeſaid and againſt the Cuſtom aforeſaid; And becauſe we will not have them the ſaid* I. *and* M. *to be injured in this Matter, we command you, that having called before you the Parties aforeſaid, and heard their Reaſons thereon, and having inſpected the Tenor of the Will aforeſaid thereupon, you cauſe to be done to the ſame* I. *and* M. *full and ſpeedy Juſtice thereupon, as of Right and according to the Cuſtom aforeſaid ought to be done, and hath hitherto in the like Caſe been accuſtomed to be done,* or *cauſe to be done to the ſame* I. *and* M. *in this Behalf due, ſpeedy and compleat Juſtice, as,* &c. *Witneſs,* &c.

And it appeareth by that Writ, that the King commandeth them to do ac- C
cording to the Cuſtom of the City, or to do Juſtice to the Parties, by which
it ſeemeth, that the Mayor upon that Writ ſhall award Proceſs to ſummon
the Party, who is Tenant of the Land, to appear at a certain Day to anſwer
to the Plaintiff, in the Nature of a Summons in a *Præcipe quod reddat*; and
when he cometh, the Plaintiff ought to ſhew the Teſtament, and to count
upon the ſame, and to alledge Seiſin of the Land in the Teſtator, and how
that he deviſed the ſame to him. And that the Defendant then plead there- D
unto, or the Mayor and Sheriffs ought to proceed therein according to the
Uſage of the City. And that Writ may be ſued againſt ſeveral Tenants; and E
then the Mayor ought to make ſeveral Precepts unto every Tenant: And if
the Land be in another Borough, then the Writ ſhall be ſuch:

The King to his Bailiffs of Great Yarmouth, *greeting,* &c. *From the grievous Complaint,* &c. (as above) *that according to the Cuſtom in the ſaid Town hitherto,* &c. *it is lawful for every Burgeſs of the ſame Town to deviſe his Tenements which he hath purchaſed to himſelf in the ſame Town by his Teſtament and laſt Will,* &c. (as above). *And* N. *a Burgeſs of the ſame Town, deviſed one Meſſuage with the Appurtenances (which he purchaſed to himſelf in the ſame Town) by his Teſtament and laſt Will, to* W. *and his Heirs,* R. *of* F. *entered into the Meſſuage aforeſaid after the Death of the aforeſaid* N. *and unjuſtly deforces the ſaid* W. *of it, to the great Expence,* &c. *of him the ſaid* W. *&c.* (as above) *and becauſe we will not,* &c. (as above).

Foſt. 201.

And if a Man deviſeth his Lands to his Wife for Life, the Remainder F
over to another in Fee, and the Tenant for Life entereth, and is ſeiſed by
Force of the Deviſe and dieth, and he in the Remainder is deforced, he ſhall
have ſuch Writ:

From the grievous Complaint, &c. (until) *to whomſoever they will; and* M. *ſome time a Citizen of the ſame City, deviſed to* D. *his Wife in his Teſtament in his laſt Will, four Shops with the Appurtenances in* I. *which he purchaſed to himſelf in the ſame City, to have the ſame for the Life of her the ſaid* D. *ſo that after the Death of the ſame* D. *the aforeſaid Shops with the Appurtenances ſhould remain to the aforeſaid* E. *and his Heirs,* N. *who holds thoſe Shops of the Demiſe* *of the aforeſaid* D. *unjuſtly deforced the aforeſaid* E. *of them after the Death of the ſame* D. *to the great Expence*, &c. *of him the ſaid* E. *&c.*

G And if a Man do deviſe Lands by his Teſtament in Tail, the Remainder over in Tail unto another, and the firſt Tenant in Tail entereth, and dieth without Iſſue; and the ſecond Tenant in Tail entereth in his Remainder, and dieth without Iſſue, the Heir of the Donor ſhall have a Writ of *Ex gravi Querela* in this Form:

From the grievous Complaint, &c. (as above) *and* I. P. *ſome time a Citizen of the City aforeſaid, Father of the aforeſaid S. whoſe Heir he is, demiſed one Meſſuage with the Appurtenances in the Suburbs of* London, *to have the ſame to* M. *Son of him the ſaid* I. *and to the Heirs of the Body of him the ſaid* M. *lawfully to be begotten; ſo that if the ſame* M. *ſhould die without Heirs of his Body lawfully begotten, the aforeſaid Meſſuage*, &c. *ſhould remain to* R. *Son of the aforeſaid* I. *and the Heirs of the Body of the aforeſaid* R. *lawfully begotten;* L. *Chaplain of the Chauntry at the Altar of Saint* John *in the new Work in the Church of Saint* Paul, London, *for the Soul of Maſter* W. *ſome time of the Order of Canons of the ſame Church, after the Death of the aforeſaid* M. *and* R. *unjuſtly deforced the aforeſaid* S. *(of the ſaid Meſſuage aforeſaid with the Appurtenances) to whom the ſame Meſſuage with the Appurtenances ought to revert, becauſe both* M. *and* R. *died without Heirs of their Bodies lawfully begotten, as it is ſaid, to the great Expence*, &c. *of him the ſaid* S. *&c.*

H And it appeareth by the ſubſequent Writ, that when a Man doth make a Deviſe of his Lands in *London*, and alſo of his Goods, and makes Executors, *&c.* then the firſt Executors ſhall prove the ſame before the Ordinary; and then after they ſhall bring the ſame before the Mayor into *London*, &c. and it ſhall be there inrolled, and then upon that Inrolment the Mayor, upon the Writ of *Ex gravi Querela* ſued for the Lands, ſhall do Execution, and ſuch Proceſs as upon a Fine of Lands, *&c.* and the Writ is ſuch:

The King to the Mayor and Sheriffs of London, *greeting: Whereas, as we have received Information, according to the Cuſtom in the ſame City hitherto obtained and approved, Teſtaments in which lay Tenements in the ſaid City are deviſed (Proof being firſt made of the ſame Teſtaments before the Ordinary for the Goods and Chattels deviſed in the ſame) ought to be approved and inrolled before you in our Huſting of* London, *for the making Execution of the Tenements ſo deviſed. And now from the Relation of* R. *Couſin of* I. *of* P. *lately Citizen of* London, *we have received Information, that although the aforeſaid* I. *hath deviſed one Shop and two Sollers with the Appurtenances in the Pariſh of Saint* Michael, London, *in the ſame City, in his Teſtament in his laſt Will to the aforeſaid* R. *to have and to hold to him and his Heirs for ever; and the ſame Will, as the Cuſtom is, is proved before the Ordinary, yet* E. *who was the Wife of* I. *of* P. *and* A. *Executor of the Teſtament of the ſame* I. *detain that Will in their Power, not ſuffering it to be inrolled in the Huſting aforeſaid, as before is ſaid, in manifeſt Danger of the Diſheriſon of him the ſaid* R. *and contrary to the Cuſtom aforeſaid; We being unwilling that the ſaid* R. *ſhould be injured in this Behalf, command you, that having called before you the aforeſaid Executor, and having heard the Reaſons as well of the aforeſaid* R. *as of the ſaid Executor, you further do in the Premiſſes that which of Right and according to the Cuſtom of the City aforeſaid ought to be done, and hath hitherto in the like Caſe been there accuſtomed to be done.* [200.]

And by that Writ it appeareth, that if a Man have Lands deviſed unto him in *London* by Will, he ſhall have a Writ unto the Mayor, to compel the Executors to bring in the ſame to be proved before them in *London*, and inrolled in the Huſtings.

And if a Man have Lands deviſed unto him in *Oxford*, the Cuſtom is, that A
the Teſtament ſhall be proved there before the Ordinary, and afterwards it ſhall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the Deviſe is made, and alſo the Executors, who took any Advantage of Adminiſtration by that Will, ſhall have a Writ out of the Chancery directed unto the Mayor and Bailiffs, cōmanding them to prove the Will, and thereupon they ſhall have an *Alias* and a *Pluries*, *vel Cauſam nobis ſignifices*, *&c.* and afterwards an Attachment againſt them, if need be, returnable in the King's Bench or Common Pleas.

Poſt. B. And by the ſame Reaſon he ſhall have the like Writ againſt the Mayor of *London* to prove ſuch Will, and to inrol the ſame, and upon that an *Alias* and *Pluries* againſt the Mayor of *London*, and Attachment, if need be.

And by the ſame Reaſon it ſeemeth reaſonable, that a Man ſhall have a Writ directed to the Ordinary to prove the Will of any Man, *&c.* and the Form of the Writ is ſuch:

The King to the Mayor and Bailiffs of the City of Oxford, *greeting: We have received the Complaint of* T. *and* M. *his Wife containing, that whereas according to the Cuſtom uſed and hitherto approved in the City aforeſaid, the Wills of Burgeſſes of the City aforeſaid there deceaſing, of Tenements and Poſſeſſions, (if they be there deviſed) ought to be proved firſtly before the Ordinary, and ſecondly before you in the Court of the City aforeſaid, and in Times paſt have been uſed ſo to be; and the Executors of the Teſtament of* N. *with the aforeſaid* T. *and* M. *after the Will of the ſaid* N. *was proved before the Ordinary of the City aforeſaid, (as the Cuſtom is) have oftentimes brought it before you to be again proved according to the Cuſtom aforeſaid, by reaſon of certain Tenements in the Suburbs of the ſame City which the aforeſaid* N. *in his laſt Will hath deviſed to the ſame* M. *as in the ſaid Teſtament it is more fully contained; nevertheleſs you have hitherto refuſed and yet unjuſtly refuſe to receive that Proof, by which neither the Executors aforeſaid, nor the ſaid* T. *and* M. *can obtain Adminiſtration upon the Tenements aforeſaid, or other Tenements deviſed by the aforeſaid* N. *in Delay of the Execution of the Teſtament aforeſaid, and againſt the Will of the aforeſaid* N. *and alſo to the great Damage and Grievance of them the ſaid* T. *and* M. *and the Executors aforeſaid: We being unwilling that the ſaid* T. *and* M. *and the Executors aforeſaid ſhould be injured in this Behalf, command you, as we have heretofore commanded you, (if it is ſo) that then you cauſe to be done to the aforeſaid Executors and* T. *and* M. *full and ſpeedy Juſtice in this Behalf, as of Right and according to the Cuſtom aforeſaid ought to be done in the like Caſe, ſo that repeated Complaint thereof may not come to us, or ſignify to us Cauſe why our Commands,* &c. *Witneſs*, &c.

And it is reaſonable that it be ſo done in every other City, where Lands be B
deviſeable by Will, and are deviſed by Will, that the Executors and the Deviſee ſhall have ſuch Actions againſt the Ordinary, and alſo againſt the Bailiffs of the Town and Boroughs, to prove ſuch Wills.

And in Place of a Formedon in the Deſcender in Tenements deviſed, is ſuch Writ:

And A. *ſome time Citizen of*, &c. *deviſed to* M. *his Daughter*, *a certain Meſſuage*, &c. *to have the ſame to her and the Heirs of her Body iſſuing*, T. *entered the ſaid Meſſuage after the Death of the aforeſaid* M. *and of* W. *the Son and Heir of the ſame* M. *and hath unjuſtly deforced* L. *the Brother and Heir of the aforeſaid* W. *to his*, &c.

And it ſeemeth, that when the Tail is once excepted before of the Deviſe in the Tenant in Tail, or in the Tenant for Term of Life, that then he (*a*) in the Remainder, or Heir of Tenant in Tail, have a Formedon in the Deſcender by the Courſe of the Common Law, after the Statute of *Weſtm.* 2. according to the common Form upon a Gift made in Tail by Deed.

C And there is another Form of Writ in the Regiſter in Nature of a Formedon in the Deſcender.

A And if a Man in *London* deviſe Land unto a Woman for Term of her Life, and afterwards to her Executors to ſell, and to convert the Money to her own Uſe, by the Cuſtom of *London* that Teſtament ought to be proved before the Ordinary, and afterwards before the Mayor, *&c.* and to be inrolled, *&c.* [201.]

B If the Teſtament be proved before the Ordinary, and afterwards one Executor doth detain the ſame, and will not prove it before the Mayor, *&c.* the other Executor ſhall have a ſpecial Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to ſee the Teſtament, *&c.* and to do Right according to the Cuſtom of the City, and according to the Law, *&c.* which Writ appeareth in the Regiſter.

C And if a Man doth deviſe Lands to his Wife for the Term of her Life, upon Condition that if ſhe marry, that the Lands ſhall remain unto his Son in Tail; and for Default of ſuch Iſſue, the Remainder to the right Heirs of the Donor in Fee: Now if the Wife taketh a Huſband who occupieth the Lands, and he in the Remainder dieth without Heir of his Body; the right Heir of the Donor ſhall have a ſpecial Writ of *Ex gravi Querela* directed unto the Mayor and Sheriffs of *London*, reciting that ſpecial Deviſe and the Matter as it is, commanding them to call the Parties, and to hear them, and to do Right, *&c.* And by that it appeareth, that he in the Remainder ſhall have Advantage of the Condition, if it be broken; but the ſame ſhall be by way of Action, and not by Entry, for the Condition not performed, which Writ appeareth in the Regiſter (*b*).

2 & 3 Ma.
Dyer.
10 Co. 41.

Vide Perkins 164. That he in the Remainder ſhall not take Benefit of the Condition by way of Entry.

(*a*) See 34 *Ed.* 3. *Formedon* 65. For a Formedon in Remainder does not lie without *alledging* Eſplees in the particular Tenant. *Dyer* 140. *b.*

(*b*) See 43 *Ed.* 3. *Formedon* 68. 4 *Ed.* 6. 27. 30 *Aſſ.* 47. 9 *Aſſ.* 17. 8 *H.* 8. 32. 1 *Inſt.* 214. *b.* *Litt.* 164.

Writ of Entre ad Terminum qui præteriit.

D A Writ of *Entre ad Terminum qui præteriit* lieth, where a Man leaſeth Lands or Tenements for Term of Life or Years, and afterwards the (*a*) Term expireth, and he to whom the Leaſe was made, or a Stranger, entereth upon the Lands, and occupieth the ſame, and deforceth the Leſſor, the Leſſor or his Heirs ſhall have the Writ.

21 Ed. 3. Brief 308. One brought the Writ upon a Leaſe by his Treſaile.

E And that Writ lieth in the *Per*, *Cui* and *Poſt*: For if the Leſſee hold over his Term, and afterwards maketh a Feoffment, the Leſſor or his Heirs may have that Writ againſt the Feoffee in the *Per*; and if the Feoffor maketh a Feoffment over, he may have it againſt the ſecond Feoffee in the *Per* and *Cui*, and againſt the third Feoffee in the *Poſt*; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that he render to* B. *one Water Gulf*, &c. *into which the ſame* A. *hath not Entry but by* C. *to whom the aforeſaid* B. *demiſed it for a Term which is paſt*, &c. *and unleſs he will do it*, &c. *and the aforeſaid* B. *ſhall make you ſecure*, &c.

And in the *Poſt* the Writ is, *And into which the ſame* A. *hath not Entry but after the Demiſe which the ſame* B. *thereof made to* D. *for a Term which is paſt, and which after that Term ought to revert to the aforeſaid* B. *as he ſaith, and whereof he complains that the aforeſaid* A. *unjuſtly deforceth him*, &c. *and unleſs*, &c.

And by theſe Words, *Unde queritur*, in any Writ of Entry in the *Per* and *Cui*, but only in a Writ of Entry in the *Poſt*.

F But if a Man will bring a Writ of Entry *ad Terminum qui præteriit* of his Father, Mother or other Anceſtor then there behoveth to be in the Writ the Words, *Which he claims to be his Right and Inheritance*; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *one Meſſuage with the Appurtenances in* N. *which he claims to be his Right and Inheritance, and into which the ſame* A. *hath not Entry but by* D. *the Father (or Mother or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is, who demiſed it to him for a Term which is paſt, as he ſays, and unleſs he will do it*, &c.

And in the *Per* and *Cui*, thus: *Which he claims*, &c. *and into which*, &c. *but by* C. *to whom* D. (*b*) *the Father (or other Anceſtors) of the aforeſaid* B. *whoſe Heir he is, demiſed it for a Term which is paſt*, &c. And in the *Poſt* thus: *But after the Demiſe which* R. *and the aforeſaid* B. *&c. whoſe Heir they are*, &c. or thus, *which* C. *Father of the aforeſaid* B. *and Grandfather of the aforeſaid* S. *whoſe Heirs they are, thereof made to* H. *for that Term which is paſt, and which after that Term ought to revert to the aforeſaid*, &c. *as they ſay, and whereof they complain that the aforeſaid* A. *unjuſtly deforceth them*, &c. *unleſs*, &c.

And in every Writ of Entry which a Man demandeth of the Poſſeſſion of his Anceſtor, he ought to have theſe Words in the Writ, *Which he claims to*

(*a*) *Viz.* By Efflux of Time or Surrender. *Dyer* 178.

(*b*) *Conſanguineus*; and it appeared by the Count that he was Great Grandfather. 21 *Ed.* 3. 52.

be his Right and Inheritance, &c. but of his own Poſſeſſion he ſhall not have thoſe Words in the Writ, but only in a *Cui in vita* brought by a Woman of her Inheritance aliened by her Huſband, for there ſhe ſhall have in her Writ theſe Words, *Which he claims to be his Right and Inheritance*, &c. but the ſame is where the Woman claimeth an Eſtate in Fee-ſimple by the Writ; for if ſhe claim but an Eſtate in Tail, or a Freehold by her *Cui in vita*, then the Writ of *Cui in vita* ſhall make a ſpecial Mention of that Eſtate, *&c.*

G If a Man leaſe a Manor for Life or Years, unto which an Advowſon is appendant, and afterwards the Leſſee doth make a Feoffment of the Manor in Fee, and taketh back an Eſtate of the Manor, except the Advowſon, to him for Life; if the Leſſor bring the Writ of Entry *Ad Terminum qui præteriit* of the Manor againſt the Leſſee, and doth not make Exception of the Advowſon, the Writ ſhall abate for Non-tenure of the Advowſon upon the Matter ſhewed, as appeareth by the Regiſter.

H The Aunt and the Niece ſhall join in this Writ of *Ad Terminum qui præteriit*, as appeareth by a Writ before mentioned.

And if a Man maketh a Feoffment in Fee upon Condition, that if he pay a certain Sum of Money at a certain Day to the Feoffee or his Heirs, that then he ſhall have the Land again, and that he may enter, if he pay the Money at the Day, and afterwards the Feoffee will not ſuffer him for to enter: The Feoffor ſhall have the Writ of *Ad Terminum qui præteriit*, becauſe that when he payeth the Money, the other hath no Term in Effect; and if he ſhould not have this Writ, he could not have any Remedy but to enter, *&c.* and thereupon to have an Aſſiſe. 33 Aſſ. 11. Vide Theolwall 131, 132, 228. 8 Ed. 3. Entre 4. V.14H.8.10. Brook.

And *M.* 5 *Ed.* 3. it was adjudged that the Plaintiff ſhould recover in ſuch Action upon ſuch Matter pleaded and ſhewed; but I do not perceive how the ſame could be maintained by Reaſon, becauſe the Fee-ſimple is not properly ſaid a Term; for then the Lord by Eſcheat ſhould have a Writ of *Ad Terminum qui præteriit*, if his Tenant dieth without Heir, where he cannot have a Writ of Eſcheat; and in *Ad Terminum qui præteriit* the Leaſe alledged in the Count is traverſable. [202.]

A If the Huſband and Wife leaſe the Wife's Lands for Years, and the Huſband dieth, and the Termor holdeth over his Term, the Wife ſhall have a Writ of *Ad Terminum qui præteriit*, if ſhe will, *&c.* but ſhe ought for to count that ſhe and her Huſband leaſed the Land, *&c.* V.50Ed.3.17.

B And it appeareth in 8 *Ed.* 2. *Itin. Canc.* that the Grantee in Reverſion ſhall have a Writ of *Ad Terminum qui præteriit* againſt the Leſſee, or his Heir or Aſſignee, and yet there is no ſuch Writ in the Regiſter.

Writ of Dum fuit non Compos Mentis.

4 Co. Beverley's Caſe. 1 Inſt. 247.

THE (a) Writ of *Dum fuit non Compos Mentis*, lieth where a Man, who C is not of *ſane memoire*, alieneth his Lands or Tenements in Fee-ſimple or in Fee-tail, for Life or for Years, if he be afterwards deforced by his Alienee or Leſſee, then he himſelf ſhall have this Writ againſt his Alienee or Leſſee, notwithſtanding this own Alienation, or his own Leaſe; and the ſame appeareth by Writs in the Regiſter, which are of ſuch Form:

The King to the Sheriff, &c. *Command* A. *that he render to* B. *one Meſſuage and twenty Acres of Land with the Appurtenances, which the ſame* B. *demiſed to him, while he was not Sound of his Mind, as he ſaith, and unleſs he will do it*, &c. Or thus: *Into which the ſame* A. *hath not Entry but by* C. *to whom the aforeſaid* B. *demiſed it, while he was not ſound of his Mind*, &c. Or thus In the Poſt: *Into which the ſame* A. *hath not Entry, but by the Demiſe which the aforeſaid* B. *while he was not ſound of his Mind, thereof made to* D. *and whereof he complains*, &c.

Litt. 97. con. 39 H. 6. 42. contra. 3 Aſſ. pl. 10. con. 9 H. 6. 6. Britton. Tit. Debt 66. Bro. Dum fuit, &c. 5, 9. N. Br. 126. 3 H. 7. 1.

And ſome have ſaid, that Writ lieth not by him who alieneth the Land, D becauſe he ſhall not diſable himſelf, nor contradict his own Deed; but that ſeemeth to be little Reaſon, for this is an Infirmity which cometh by the Act of God; and it ſtandeth with Reaſon, that a Man ſhould ſhew how he was viſited by the Act of God with Infirmity, by which he loſt his Memory and Diſcretion for a Time; as if an Infant within the Age of twenty-one Years doth make a Feoffment in Fee, or a Leaſe for Years, he himſelf ſhall avoid his Feoffment or Leaſe, as well within Age as of full Age, although he ſhall not have a *Dum fuit infra ætatem* within Age, becauſe the Writ doth ſuppoſe him to be of full Age; but an Infant of the Age of fourteen Years hath Diſcretion, as hath been adjudged, at ſuch Age; and if he at ſuch Age commit Felony, he ſhall be hanged for the ſame, and yet his Feoffment, Leaſe or Grant, ſhall not bind him before the Age of twenty-one Years; becauſe he hath not perfect Diſcretion or Knowledge what he ought to do, or what is to his Profit or Diſadvantage before ſuch Age; and therefore he ſhall alledge, that he was within Age at the Time of the Feoffment, Grant or Leaſe made by him; by which it appeareth, that he ſhall alledge, that he had not perfect Diſcretion at that Time, for that Nonage is an Infirmity of Nature, and cometh by the Act of God; and *a fortiori* then he who is of *non ſane memoire*, ſhall alledge, that he was not of *ſane memoire* at the Time of his Feoffment or Grant; for he who is of unſound Memory, hath not any Manner of Diſcretion; for if he kill a Man, it ſhall not be Felony, nor Murder, nor he ſhall not forfeit his Lands or Goods for the ſame, becauſe it appeareth that he hath not Diſcretion; for if he had Diſcretion he ſhould be hanged for the ſame, as an Infant who is of the Age of Diſcretion, who commiteth Murder or Felony, ſhall be hanged for the ſame.

Plow. Com. 19. a. 21 H. 7. 32. 26 Aſſ. 27. 5 Ed. 3. Con. 24. contra. 4 Ed. 3. 19. a.

(a) The Iſſue in Tail ſhall not have a *Dum fuit non Compos* on the Alienation of his Anceſtor, but a Formedon. 18 *Ed.* 3. 31.

And it appeareth in *Britton*, that in Debt upon a Bond, the Defendant ſaid, that he was not of *Sanæ memoriæ* at the Time of making the Bond, and holden that it was a good Plea.

E And if an Ideot doth releaſe all his Right by Deed, yet if it be afterwards found by Office that he is an Ideot, the King ſhall ſeize the Land, and the Releaſe ſhall not bind, *&c.* *Quod vide* in Title *Scire facias*, *P.* 32 *Ed.* 3. in the Abridgments.

Stanford Prærog. 34. 50 Aſſ. 2. con.

(*a*) But in the Book of Aſſiſes, *Anno* 35 *Ed.* 3. the Tenant in an Aſſiſe pleaded the Releaſe of the Plaintiff, and the Plaintiff ſaid, that he was not then of *ſane memoire*, *&c.* And there the Opinion of two Juſtices was, that he ſhould not have that Plea; but I do not much regard their Opinion for the Reaſons aforeſaid.

F And it appeareth in 7 *Henry* 4. 5. That a Feoffment of an Ideot made by Letter of Attorney is void, and ſo it ſeemeth to be of a Man of *Non ſane memoire*.

(*b*) And if a Man of *Non ſane memoire* alieneth his Land in Fee and dieth, his Heir ſhall have ſuch Writ as he may enter, as his Anceſtors might have entred, as well as if an Infant within Age had aliened his Lands, *&c.*

And in 25 *Ed.* 3. in the Book of Aſſiſes, a Man of *Non ſanæ memoriæ* made a Feoffment in Fee, and took back an Eſtate to himſelf for Life, and there it was agreed and admitted, that the ſame was a Remitter, and (*c*) thereupon Iſſue was taken, that he was of perfect Memory, *&c.* and that was found by Verdict; which ſee in the Title of *Feoffments* in the Abridgments.

Dum non Compos Mentis was brought of the Alienation by a Son, and admitted, 18 Ed. 3. Sci. fac. 10. 12 Ed. 4. 6. 39 H. 6. 42.

[203.]

B And the Writ for the Heir upon the Alienation of his Anceſtors ſhall be in ſuch Form:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *twenty Acres of Land with the Appurtenances in* N. *which he claims to be his Right and Inheritance, and into which the ſame* A. *hath not Entry but by* C. *or other Anceſtor of the aforeſaid* B. *whoſe Heir he is, who demiſed them to him, while he the ſame* C. *was not found of his Mind, as he ſaith*, &c.

And thus in the *Per* and *Cui:*

Which he claims, &c. *and into which*, &c. *but by* C. *to whom* D. *the Grandfather of the aforeſaid* B. (*or other Anceſtor of the aforeſaid* B.) *whoſe Heir he is demiſed them, while he the ſame* D. *was not found of his Mind*, &c.

Or thus in the *Poſt:*

Which he claims, &c. *and into which*, &c. *but after the Demiſe which* C. *the Great Grandfather* (*or other Anceſtor of the aforeſaid* B.) *whoſe Heir he is, while he the ſame* C. *&c. thereof made, as he ſaith, and whereof he complains,*

C And 14 *An.* of the King was ſuch Writ granted:

D *Command* R. *that*, &c. *he render to* B. *one Rent of three Loaves of Bread, ſeven Flaggons of Ale, and ſeven Meſſes of Meat by the Week, with the Appurtenances in* C. *and which he the ſame* B. *demiſed to him, while he was not found of his Mind, as he ſaith, and unleſs*, &c. And the Proceſs is *Grand Cape* and *Petit Cape*, as in other *Precipes quod reddat*.

(*a*) F. *Scire facias* 106. 18 *Ed.* 3. *ibid.* 10.

(*b*) 7 *H.* 4. 5. So that the Land ſhall eſcheat notwithſtanding the Feoffment. 4 *Co. Beverley's* Caſe.

(*c*) But *note*; The Iſſue found that he was remitted. 25 *Aſſ.* 4. See 17 *Ed.* 3. 7. or 70. See *Bro. Feoffment de Terr'* 26. *F. Remitter* 23. It is not admitted to be a Remitter.

Writ of Intruſion.

THE Writ of Intruſion lieth, where Tenant for Life, or in Dower, or by E the Curteſy, (*a*) dieth ſeiſed of ſuch Eſtate for Life, and after their Death a Stranger doth intrude upon the Land, he in the Reverſion ſhall have that Writ againſt the Intruder, and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one* F *Ploughland with the Appurtenances in* N. *which he claims to be his Right and Inheritance, and into which the ſame* A. *hath not Entry* (*b*) *but by the Intruſion which he made into it after the Death of* C. *who was the Wife of* D. *who held it in Dower of the Gift of the aforeſaid* D. *ſometime her Huſband, the Father or Brother of the aforeſaid* B. *whoſe Heir he is, as he ſaith, and unleſs*, &c.

And in the *Per* thus:

And into which the ſame A. *hath not Entry but by* C. *who demiſed it after the Death of* D. *who was the Wife of* E. *who held it in Dower, of the Gift of the aforeſaid* E. *ſometime her Huſband.*

And in the *Per* and *Cui* thus:

And into which the ſame A. *hath not Entry but by* C. *to whom* D. *demiſed it, who intruded himſelf into it after the Death of*, &c.

And in the *Poſt* the Writ is thus:

Into which the ſame A. *hath not Entry but by the Intruſion which* C. *made into it after the Death of* D. *who was the Wife of* E. *who held it in Dower of the Gift of the aforeſaid* E. *ſometime her Huſband, Brother of the aforeſaid* B. *whoſe Heir he is, and which after the Death of the aforeſaid* D. *ought to revert to the aforeſaid* B. *as he ſaith, and whereof he complains*, &c. *and unleſs*, &c.

And ſo that Word, *& unde queritur* was put in every Writ of Entry in the *Poſt*.

G And if a Woman recover Dower againſt him in the Reverſion, or againſt his Heir, and afterwards ſhe died ſeiſed of that Eſtate, and a Stranger doth intrude into the Land, then he in the Reverſion ſhall have a Writ of Intruſion. And in the Writ mention ſhall be made of the Recovery thus, *And into which the ſame* A. *hath not Entry but by the Intruſion which he made into it, after the Death of* C. *who was the Wife of* D. *who recovered it in our Court, before our Juſtices at* W. *by our Writ, by the Conſideration of the ſame Court, as her Dower which fell to her of the Freehold, which was of the aforeſaid* D. *ſometime her Huſband in the ſame Town, againſt the aforeſaid* B. or thus: *againſt* W. *the Father, or other Anceſtor of the aforeſaid* B. *whoſe Heir he is, as he ſaith, and unleſs*, &c.

And ſo ſhe ſhall have another Writ of another Form, where ſhe recovereth her Dower againſt the Heir of her Huſband, and after the Heir granteth the

Reverſion

(*a*) And therefore ſee 24 *Ed.* 3. 74. It is a good Plea to ſay that he was ſeiſed, and gave to him whom he ſuppoſes Tenant for Life, and to the Heirs of his Body, and for that he died without Heir, he entred *abſque hoc*, that he held for Life of the Leaſe of the Demandant, at the Time of his Death.

(*b*) And not *in quas ſe intruſit.* 6 *Ed.* 2. *Brief* 808.

Reverſion unto the ſaid *B.* and then the Tenant in Dower dieth ſeiſed, and a Stranger abateth, the ſaid *B.* ſhall have a Writ of Intruſion againſt the Stranger, and the Writ ſhall rehearſe the whole ſpecial Matter, which Writ appeareth in the Regiſter.

H And the Aunt and the Niece ſhall join in a Writ of Intruſion, and if the Heir doth aſſign Dower unto his Mother, and then commits Felony, for which the Lord claimeth the Reverſion, and granteth the ſame to one in Fee, to whom the Tenant attorneth, and afterwards the Grantee of the Reverſion hath Iſſue two Daughters, and dieth, and one of them hath Iſſue and dieth: Now the Aunt and the Niece ſhall join in that Writ, *&c.* and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *and* M. *her Siſter*, *and to* P. *and* F. *his Brother*, *one Meſſuage*, &c. *into which the ſame* A. *hath not Entry but after the Intruſion which* H. *made into it*, *after the Death of* I. *who was the Wife of* W. *who held it in Dower (of*, &c. *ſometime her Huſband) of* N. *Father of the aforeſaid* B. *and* M. *and Grandfather of the aforeſaid* P. *and* F. *whoſe Heir they are*, *of the Aſſignment of* T. *Chief Lord of the Fee*, *of whom the aforeſaid* I. *held it in Dower*, *by reaſon of Felony committed by* W. *of* S. *Son and Heir of the aforeſaid* W. *as it is ſaid. And which after the Death of the aforeſaid* I. *ought to revert to the aforeſaid* B. M. P. *and* F. *by Form of the Aſſignment aforeſaid*, *as they ſay*, *and whereof they complain*, &c.

A And if a Man intrude after the Death of Tenant by the Curteſy, the Writ [204] of Intruſion ſhall be ſuch:

Command A. *that*, &c. *he render to* B. *&c. which he claims*, &c. *and into which the ſame* A. *hath not Entry but by the Intruſion which he made into it*, *after the Death of* D. *who held it by the Law of* England *after the Death of* C. *ſometime his Wife*, *the Mother or Aunt of the aforeſaid* B. *whoſe Heir he is*, &c. *as he ſaith.*

And in the *Per* thus:

But by C. *who demiſed it to him*, *who intruded himſelf into it*, &c.

And in the *Per* and *Cui* thus:

But by C. *to whom* D. *demiſed it*, *who intruded himſelf into it.*

And in the *Poſt* thus:

But after the Intruſion which W. *made into it after the Death of* C. *who held it by the Law of* England *after the Death of* D. *ſome time his Wife*, *Mother of the aforeſaid* B. *whoſe Heir he is*, &c. *and which after the Death of the aforeſaid* C. *ought to revert to the aforeſaid* B. *as he ſaith*, *and whereof he complains*, &c. *and unleſs*, &c.

B And if a Man doth intrude after the Death of Tenant for Life; then he in the Reverſion ſhall have ſuch Writ of Intruſion.

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. (*a*) *he render to* B. *&c. into which the ſame* A. *hath not Entry but by the Intruſion which he made into it after the Death of* C. *to whom the aforeſaid* B. *or to whom* D. *the Father* (or other Anceſtor) *of the ſaid* B. *whoſe Heir he is*, *demiſed it for the Life of him the ſaid* C. *as he ſaith*, *and unleſs*, &c.

And in the *Per* thus:

(*a*) But if the Writ be founded on the Leaſe *& hæreditatem ſuam.* 10 *H.* 6. 9. Yet if it be of the Anceſtor, it ſhall be *quod clamat eſſe Jus* omitted, it is amendable.

And into which the ſame A. *&c. but by* C. *who demiſed it to him who intruded himſelf into it after the Death of* W. *to whom the aforeſaid* B. *or* R. *Father (or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is, demiſed it for the Life of him the ſaid* W. *&c.*

And in the *Per* and *Cui* thus:

Into which, &c. *but by* C. *to whom* D. *demiſed it, who intruded himſelf into it,* &c.

And in the *Poſt* thus:

But after the Intruſion which D. *made into it after the Death of* I. *to whom* B. *the Father (or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is, demiſed it for the Life of him the ſaid* I. *and which, after the Death of him the ſaid* I. *ought to revert to the aforeſaid* B. *as he ſaith, and whereof he complains,* &c.

And in the Regiſter there are other Forms of Writs, where the Reverſion C of the Tenant is granted by Fine or otherwiſe, which ſhall be *ex aſſignatione.*

And the Heir in Tail ſhall not have a Writ of Intruſion; if a Man do in- D trude after the Death of Tenant in Dower, or of Tenant by the Curteſy, or after the Death of Tenant for Life, he in the Reverſion in Tail ſhall not have a Writ of Intruſion, but he ſhall be put to his Writ of *Formedon*; for that Writ lieth for him who hath the Reverſion in Fee-ſimple, or for Term of Life, and not for him who hath the Reverſion in Tail or for Term of Years; for it lieth not but for him who hath a Freehold, after the Death of Tenant for Term of Life, or of Tenant in Dower, *&c.*

And he in the Remainder ſhall have a Writ of Intruſion, if a Man do intrude after the Death of Tenant for Life; and ſo the Aſſignee of the Remainder ſhall have ſuch Writ:

If Lands be given to two, and to the Heirs of one of them, and he who E hath the Fee dieth, and then the Tenant for Life dieth, the Heir of him in Remainder ſhall have ſuch Writ.

Into which, &c. *but by the Intruſion which he made into it, after the Death of* C. *who was the Wife of* D. *who held it for her Life, of the Demiſe which* R. *thereof made to her the ſame* C. *and the aforeſaid* D. *ſometime her Huſband, and to the Heirs of him the ſaid* D. *Father of the aforeſaid* B. *whoſe Heir he is,* &c. *as he ſaith, and unleſs,* &c. And the Proceſs in that Writ is Summons, *Grand Cape* and *Petit Cape.*

Writ of Cui ante Divortium.

THE Writ of *Cui ante Divortium* lieth, where the Huſband alieneth the F Wife's Land which ſhe had in Fee-ſimple, or in Tail, or for Life, unto a Stranger in Fee-ſimple, in Fee-tail, or for Life; and afterwards the Huſband and Wife are divorced, then the Wife ſhall have that Writ againſt the Alienee; and the Form of the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly,* &c. *he render to* B *who* G *was the Wife of* D. *one Meſſuage with the Appurtenances in* N. *which ſhe claims to be her Right and Inheritance, and into which,* &c. *but by the aforeſaid* D. *ſometime the Husband of her the ſaid* B. *who demiſed it to him, whom ſhe could not oppoſe before the Divorce between them ſolemnized.*

And

H And that Writ lieth in the *Per*, *Cui* and *Poſt*, as doth the other Writ of *Cui in vita.*

I And if the Huſband do alien unto an Abbot in Fee, and afterwards the Huſband dieth, the Wife ſhall have a Writ of *Cui ante Divortium*, in the *Poſt*, againſt the Succeſſor of the Abbot; and the Form of the Writ ſhall be thus:

K *Into which the ſame Abbot hath not Entry, but after the Demiſe which the aforeſaid* D. *ſometime the Husband of her the ſaid* B. *(whom ſhe could not oppoſe before the Divorce*, &c.) *thereof made to* L. *ſometime Abbot of* B. *as ſhe ſaith, and whereof ſhe complains*, &c.

And the Heir ſhall have a *Sur cui ante Divortium*, where the Wife dieth before the Action brought, as well as he ſhall have a *Sur cui in vita:* But of an Eſtate-tail, the Heir ſhall not have a *Sur cui in vita ante Divortium*, but ſhall be put to his Formedon in the Deſcender.

L And the Aunt and the Niece ſhall join in that Writ, as they ſhall do in a

M *Sur cui in vita*; and the Proceſs is Summons, *Grand Cape* and *Petit Cape.*

Writ of Cauſa Matrimonii prælocuti.

A THE Writ of *Cauſa Matrimonii prælocuti* lieth, where a Woman giveth Lands unto a (*a*) Man in Fee-ſimple, unto the Intent that he ſhall marry her, and afterwards he will not marry within convenient Time, when he is required by the Woman. Then the Woman ſhall have that Writ; and the Form of the Writ is ſuch: [205.]

B *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one Meſſuage, which the ſame* B. *demiſed to him, becauſe of a Marriage, before treated of, between them, wherefore he ought to have married her, and hath not yet married her, as ſhe ſaith*, &c.

And in the *Per* and *Cui* thus:

Into which, &c. *but by* C. *to whom the aforeſaid* B. *demiſed it, becauſe of a Marriage*, &c. *and hath not married her, as ſhe ſaith, and whereof ſhe complains*, &c.

C And it ſeemeth, That that Writ lieth for the Woman, where ſhe giveth Lands to a Man for Term of his Life, for the Intent to marry her, as well as where ſhe giveth it in (*b*) Fee-ſimple. But if ſhe giveth it to a Man in Tail to marry her, *&c.* although he will not marry her, it ſeemeth ſhe ſhall not have that Writ againſt him, by that Means to avoid and defeat the Eſtate-tail; for that ſhall be contrary to the Statute of *Donis conditionalibus.* And a Man upon a Condition in Law ſhall not make void the Statute. For the Statute makes a Law certain by expreſs Words of Gift in Tail. And then it is not Reaſon, that it ſhould be aneanted by Intendment, or by a Thing C. 2 Part 74.

(*a*) But he ſhall never have an Averment againſt a Deed without Plea. 14 *Ed.* 3. but adjudged *contra* on a Writ of Error. 12 *Ed.* 1. *Feoffment* 114. *Vide infra* L.

(*b*) If it be not by Writing. *Dyer* 312. See 14 *H.* 8. 8. & *infra* K.

averrable, which is not expreſſed, and ſhall be taken contrary to the Statute.

3 & 4 Ma. Dyer 146.

And the Heir ſhall have that Writ as well as the Woman herſelf; and the Writ ſhall be,

But if he expreſs an Entry if he marry, then he may alien, but till Alienation he is ſeiſed jure uxoris.

Command A. *&c. that he render to* B. *&c. which ſhe claims, and into which he hath not Entry but by* C. *(the Mother of the aforeſaid* B. *whoſe Heir ſhe is) who demiſed it to him, by reaſon of a Marriage*, &c. *and he hath not married her*, &c. *and unleſs*, &c. D

And it may be in the *Per*, *Cui* and *Poſt*, as the Caſe is. E

And alſo the Aunt and the Niece may join in the Writ.

5 Ed. 2. Br. Cond. 204.

(*a*) And if a Man do give Lands unto a Woman unto the Intent to marry him, although that the Woman will not marry him, *&c.* he ſhall not have a Writ *Cauſa Matrimonii prælocuti* in that Caſe, and alſo that the Woman do after marry him; yet the Woman ſhall hold the Land to her and her Heirs, *&c.* and if the Huſband do afterwards alien them, ſhe ſhall have a *Cui in vita* for thoſe Lands (*b*). F

5 Ed. 2. 24. 6 H. 4. 1. 8 Ed. 2. Entry 78. 17 Aſſ. pl. 20. N. Br. 135. Poſt. L.

If a Woman do enfeoff a Stranger by Deed of Land in Fee, to the Intent to enfeoff her, and one who will be her Huſband; if the Marriage doth not take Effect, ſhe ſhall have the Writ of *Cauſa Matrimonii prælocuti* againſt the Stranger, notwithſtanding that the Deed of Feoffment be abſolute; *quod vide* in Title *Aſſiſe*, 34 *Ed.* 3. *lib. Aſſiſe.* G

14 H. 8. 19. Brudnell. 24 H. 8. 9. It is a good Condition. 30 Aſſ. 17. Condit. 17. & Br. Condit. 119.

A Woman did enfeoff a Man upon Condition that he ſhould take her to Wife, and he had a Wife at the Time of the Feoffment, and afterward the Woman for not performing of the Condition, entred again into the Land, upon the ſecond Feoffee, and her Entry was adjudged lawful, and the Condition, is good. *Anno* 40 *Ed.* 3. *lib. Aſſ.* 40 *Aſſ. pl.* 13. 8 *Ed.* 2. *Entry* 78. 24 *H.* 8. *Feoffments* 40. H

And the Huſband and Wife may ſue that Writ of *Cauſa Matrimonii prælocuti* againſt another who ought to have married her. I

8 Ed. 2. Entry 78. ac. of a Condition expreſſed. Note 3 & 4 Ma. Dy. 146. one cannot aver a Conſideration againſt a Conſideration expreſſed by Deed. Vide 14 Eliz. Dyer 211, 212.

And if a Woman maketh a Feoffment in Fee by Deed, reſerving Rent, then ſhe ſhall not have that Writ of *Cauſa Matrimonii prælocuti* for the Rent reſerved, becauſe it is proved that the Reſervation was the Cauſe of the Feoffment; but if ſhe hath a Deed to ſhew and prove that the Feoffment was to the Intent that he ſhould marry her, then ſhe ſhall maintain her Action notwithſtanding the Reſervation made of the Rent. *Dyer* 146, 312. K

And a Woman may ſue *Cauſa Matrimonii prælocuti* without any Writing ſhewed to prove the ſame, where ſhe maketh a Feoffment without Deed to a Man in Fee, to the Intent to marry her, *&c.* and the Proceſs is Summons, *Grand Cape* and *Petit Cape*, *&c.* 14 *H.* 8. 30. 12 *Ed.* 1. *Feoffments* 114. *Ant.* A. *N. Br.* 135. *con.* L

(*a*) *Dyer* 147. (*b*) 6 *Ed.* 2. *Cui in vita.* 24 *H.* 6. 1. 6 *H.* 4. 1. 5 *Ed.* 2. *Cui in vita* 24. *N. Br.* 135.

Writ of Entry in Caſu proviſo.

M THE Writ of Entry *in Caſu proviſo* is given by the Statute of *Glouceſter*, *cap.* 7. and that Writ lieth where Tenant in Dower doth alien in Fee, for Life or in Tail, the Land which ſhe holdeth in Dower; he who hath the Reverſion in Fee, or in Tail, or for Life, ſhall maintain that Writ againſt the Alienee; and againſt him who is the Tenant of the Freehold, of the Land during the Life of the Tenant in Dower, *&c.* And the Writ may be made in the *Per*, *Cui* and *Poſt*; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *&c. which he claims*, &c. *and into which the ſaid* A. *&c. but by* C. *who was the Wife of* D. *who demiſed it to him, who held it in Dower of the Gift of the aforeſaid* D. *ſome time her Husband, the Father (or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is, and which after the Demiſe made by her the ſaid* C. *to the aforſaid* A. *againſt the Form of the Statute thereof provided at* Glouceſter *by the Common Council of our Realm, ought to revert in Fee to the aforeſaid* B. *by the Form of the ſame Statute, as he ſaith, and unleſs*, &c.

And in the *Per*, thus:

Into which the ſame A. *hath not Entry but by* C. *to whom* D. *who was the Wife of* E. *demiſed it, who held it in Dower*, &c. *and which after the Demiſe*, &c.

And in the *Poſt*, thus:

Command A. *that*, &c. *he render to* B. *&c. which he claims*, &c. *and into which*, &c. *but after the Demiſe which* C. *(who was the Wife of* D. *who held it in Dower of the Gift of the aforeſaid* D. *ſome time her Husband, Father of the aforeſaid* B. *whoſe Heir he is) thereof made to* F. *and which after the Demiſe made by her the ſaid* C. *&c.* (as above, till) *ought to revert to the ſaid* B. *by the Form of the ſame Statute, as he ſaith, and whereof he complains*, &c. *and unleſs*, &c. [206.]

A And if a Woman do recover her Dower againſt the Heir, and afterwards doth alien in Fee, the Heir ſhall have the Writ of *Caſu proviſo*; and in the Writ he ſhall mention the Recovery, as he ſhall do in a Writ of Entry *ad communem Legem*, upon an Alienation made by Tenant in Dower, *&c.* And although a Woman alien in Tail, or for Life, yet the Writ is always of one Form.

B If a Man grant the Reverſion of Lands which are holden of his Inheritance in Dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in Fee, the Grantee of the Reverſion ſhall have ſuch Writ *de Aſſignatione*.

Command A. *that*, &c. *he render to* B. *&c. and into which*, &c. *but by* C. *who was the Wife of* D. *who held it of the aforeſaid* D. *in Dower, of the Gift of the aforeſaid* D. *ſome time her Husband, of the Aſſignment which* W. *Son and Heir of the aforeſaid* D. *thereof made to the aforeſaid* B. *and which after the Demiſe*, &c.

And if the Heir grant the Reverſion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the ſame over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the Reverſion ſhall have ſuch Writ *de Caſu proviſo*.

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *&c. which he claims*, &c. *and into which*, &c. *but by*, or, *after the Demiſe*, &c. (as the Caſe is) *which* C. *who was the Wife of* D. *who held it in Dower (of the Gift of the aforeſaid* D. *ſome time her Husband) of the aforeſaid* B. *of the Aſſignment which* E. *of whom the aforeſaid* C. *held it in Dower of the Aſſignment of* F. *of whom the ſame* C. *held it in Dower of the Aſſignment which* G. *Son and Heir of the aforeſaid* D. *thereof made to the aforeſaid* F. *thereof made to the aforeſaid* W. *and which after the Demiſe made by her the ſaid* C. *&c. ought to revert*, &c.

If the Writ be in the *Per*, and if the Writ be in the *Poſt*, then the Writ C
ſhall be,

And which after the Demiſe by her the ſaid C. *ought to revert by Form of the Statute*, &c.

And the Aunt and the Niece may join in that Writ where the Tenant in D
Dower doth alien in Fee, and they have the Reverſion by Deſcent from their
Anceſtor, and the Proceſs is Summons, Grand Cape and Petit Cape, *&c.* E

Writ of Entry in conſimili Caſu.

The Writ is not maintainable againſt Tenants in Tail; after Poſſibility of Iſſue extinct. Old Tenure. 13 Ed. 2. Entre congeable 56. 14 Ed. 3. Brief 283. N. Br. 137. Ant. 198. 3 Ed. 2. Entr. &c 8. N. 11 Ed. 2. Entry 68.

F THERE is another Writ of the like Nature, which is called a Writ of Entry *in conſimili Caſu*; and that Writ lieth where Tenant by the Curteſy, or for Life, or for another's Life, doth alien in Fee, (*a*) or in Tail, or for Life; now he in the Reverſion, who hath an Eſtate therein for Life, or in Fee-ſimple, or (*b*) in Tail, ſhall have that Writ during the Life of the Tenant for Life who aliened, and that Writ is not given by the Statute of *Glouceſter*, which gave the Writ of *in Caſu proviſo*; but it is formed and granted upon the Statute of *Weſtminſter* 2. *cap.* 14. which wills, *That as often as it ſhall happen in the Chancery, that in one Caſe a Writ is found, and in the like Caſe falling, wanting the ſame Remedy; now the Clerks of the Chancery ſhall agree in the making the Writ, and that appeareth* H. 3 Ed. 2.

And if the Tenant by the Curteſy doth alien, he in the Reverſion ſhall have G
ſuch Writ:

Command A. *that*, &c. *he render to* B. *one Meſſuage*, &c. *which he claims*, &c. *and into which*, &c. *but by* C. *(who demiſed it to him) who held it by the Law of* England *after the Death of* E. *ſome time his Wife, the Mother, Great Grandmother or Grandmother of the aforeſaid* B. *whoſe Heir he is, and which after the Demiſe thereof made by him the ſaid* C. *to the aforeſaid* A. *in Fee, ought to revert to the aforeſaid* B. *by Form of the Statute provided in ſuch like Caſe, as he ſaith, and unleſs*, &c. And in the *Per* and *Cui*, thus: *And into which*, &c. *but by* C. *to whom* D. *demiſed it, who held it by the Law of* England, *&c.* And in the *Poſt*, thus: *And into which*, &c. *but after the Demiſe which* C. *who held it by the Law of* England, *&c.* (as above) *whoſe Heir he is, thereof made to* F. *and which after the Demiſe*, &c.

(*a*) But not if he be Tenant after Poſſibility, 13 *Ed.* 3. *Entre cong.* 56.

(*b*) So for him who has a Fee-tail in Reverſion, 21 *Ed.* 3. 11. See a Writ againſt *J. S. In quo non habet ingreſſum niſi poſt* a Leaſe to him made, *&c.* 8 *Ed.* 2. *Brief* 810.

And if the Tenant for Life alien, then he in the Reverſion ſhall have a Writ in this Form:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one Meſſuage*, &c. *into which the ſame* A. *hath not Entry*, *but by* C. *to whom the aforeſaid* B. *demiſed it*, *for the Life of him the ſaid* C. *and which after the Demiſe by him the ſaid* C. *to the aforeſaid* A. *thereof made in Fee*, *ought to revert to the aforeſaid* B. *by Form of the Statute*, &c. ut ſupra.

And *Note*, That by that Writ it appeareth, that the Writ doth ſuppoſe, that the Tenant for Life doth alien in Fee; and although he grant but for Life, or in Tail, yet the Writ doth ſuppoſe that he alieneth in Fee, *&c.* but that is not material: For if it be in Fee, or in Tail, or for Life, it is a Forfeiture of his Eſtate. 38 H. 6. 3.

And ſo in the Caſe, in the Writ *in Caſu proviſo*, and in the Writ of *Entre ad communem Legem*, it ſuppoſeth the Alienation to be made in Fee, although it be but for Life, or in Tail, for that there is no other Form: And it may be made in the *Per*, *Cui* and *Poſt*, and that without Title made in the Writ, becauſe it is of a Leaſe made by the Defendant himſelf to the Tenant that alieneth: But if the Father or other Anceſtor leaſe for Life, and dieth, and afterwards the Tenant for Life alieneth in Fee, *&c.* now the Heir who is in the Reverſion, ſhall have a Writ, which ſhall comprehend a Title in it; and ſhall be ſuch:

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B *one Meſſuage*, &c. *which he claims*, &c. *and into which*, &c. *but by* C. *and* D. *his Wife*, *to whom* I. *the Father or Mother*, *(or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is*, *demiſed it for the Lives of them the ſaid* C. *and* D. *and which after the Demiſe*, &c. [207.]

And there the Writ doth ſuppoſe, that the Wife did demiſe it, *&c.* and yet ſhe ſhall have a *Cui in vita* after the Death of her Huſband, to recover the Freehold, notwithſtanding the Alienation made by her Huſband. And if Tenant for Life grant his Eſtate unto another, and the Grantee alieneth in Fee, *&c.* then the Writ ſhall be,

Into which the ſame A. *&c. but by* C. *to whom* D. *who held it for his Life of the Demiſe of the aforeſaid* B. *demiſed it for the ſame Term*, *and which after the Demiſe*, &c.

A And if a Man leaſe Lands for Term of Life, and afterwards dieth, and his Heir grants the Reverſion to *B.* and the Tenant attorn, and afterwards the Leſſee for Life granteth his Eſtate over to one who alieneth to *A.* in Fee; now *B.* ſhall have ſuch Writ:

Command A. *that*, &c. *he render to* B. *&c. into which*, &c. *but by* C. *(who demiſed it to him) who held it for the Life of* D. *of the aforeſaid* B. *of the Aſſignment which* I. *Son and Heir of* R. *made thereof to the ſaid* B. *which ſaid* R. *demiſed it to the aforeſaid* D. *for the ſame Term*, *and which after the Demiſe*, &c.

If *H.* leaſe Lands unto *R.* for Life, and afterwards granteth the Reverſion to *B.* in Fee, and *R.* attorn, and afterwards *R.* alieneth in Fee, *B.* ſhall have this Writ: 12 Ed. 2. Entry 69.

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *&c. into which*, &c. *but by* R. *(who demiſed it to him) who held it for his Life of the aforeſaid* B. *of the Aſſignment which* I. *(who demiſed it to* R. *for the ſame Term) thereof made to the aforeſaid* A. *and which after the Demiſe*, &c.

20 Ed. 2.
Brief 849.

And if Lands be given unto two, and the Heirs of one of them, and he B who hath the Fee dieth, and afterwards the Tenant for Life alieneth in Fee, the Heir of him in the Remainder ſhall have this Writ:

Into which, &c. *but by* C *(who demiſed it to him) who held it for his Life of the Demiſe which* H. *thereof made to the ſaid* C. *and* D. *and the Heirs of him the ſaid* D. *Father of the ſaid* B. *whoſe Heir he is, and which after the Demiſe*, &c. (*a*).

And by that appeareth, that he in the Remainder ſhall have a Writ of *in* C *conſimili Caſu*, if Tenant for Life alien in Fee.

Vide 3 Ed. 2. Entre 6. con. For it is not given by the Statute of Glouceſter. But Weſt. 2. cap. 24. ſee 206. fol.

And if an Abbot or Prior leaſe Lands for Life, and alieneth, and the Prior dieth, the Succeſſor ſhall have this Writ:

Command A. *that*, &c. *he render to* B. *one Meſſuage*, &c. *which he claims to be the Right of his Church of Saint* Thomas the Martyr *of* K. *and into which*, &c. *but by* C. *to whom* D. *demiſed it, who held it for his Life of the Demiſe which* S. *ſome time Prior of* K. *Predeceſſor of the aforeſaid Prior, thereof made to the aforeſaid* D. *and which after the Demiſe*, &c.

29 Aſſ. 62.
21 Ed. 3. 11.
Entry 10.
7 Ed. 3. 45.
31 Ed. 1.
Entry 64.
21 Ed. 3.
Entry 10.

And if Tenant in Tail maketh a Leaſe for Life, and the Tenant for Life D alieneth in Fee, the Tenant ſhall have a Writ *in conſimili Caſu*. And ſo it ſeemeth, if Tenant in Tail do leaſe the Land unto another for the Life of the Leſſee, and dieth, and the Tenant for Life alieneth in Fee; the Heir in Tail may chuſe to have a Formedon, or to ſue the Writ of *conſimili Caſu*, living the Tenant for Life. For the Tenant in the Action ſhall not have the Plea to abate the Writ, to ſay, that he hath Title to have a Formedon of the Land, *&c.* But if Tenant in Tail leaſe Lands for the Term of his own Life, which is not any Deſcent, and afterwards the Tenant for Life doth alien in Fee, and the Tenant in Tail dieth, his Heir ſhall not have a Writ of *conſimili Caſu*, but ſhall be put to his Formedon in that Caſe. For there he hath not Title to have any other Action by Colour of any Demiſe; but in the Caſe before he had Title by reaſon of the Diſcontinuance made for Life, to claim by reaſon of the Right in Reverſion deſcended to him, ſo that he had Right by reaſon of the Reverſion in his Father reſerved upon the Leaſe, and alſo by reaſon of the Title of the Intail to chuſe what Action he would have; *tamen quære.*

7 Ed. 2.
Entry 7.
7 Ed. 3. 17.
Entry 61.

A Leaſe was made to one for Term of Life, the Remainder to another in E Fee, and afterwards the Tenant for Life did alien in Fee, for which he in Remainder brought a Writ *de conſimili Caſu*, and the Writ was abated. *Paſch.* 7 *Ed.* 3. But the Court there ſaid, That the Cauſe was, becauſe he in the Remainder was not to have the Remainder *in facto*, until it fell, and that after the Death of Tenant for Life; and it is not like unto a Reverſion: But the Law is not taken ſo at this Day, but that he in the Remainder hath the Remainder veſted in him, as he in the Reverſion hath the Reverſion: For he ſhall have an Action of Waſte, and ſhall enter for the Alienation of his Tenant, as well as he in the Reverſion, and therefore it followeth, that the Remainder is in him *in facto*; for which Cauſe I conceive, that Judgment was not rightly given. And *Hill.* 18 *Ed.* 2. it was holden by Juſtice *Herle*, that F the Writ did lie for him in the Remainder, *&c.* And the Heir in Tail brought a Writ of *conſimili Caſu* upon an Alienation made by Tenant by the Curteſy, and the Writ was maintainable. *T.* 31 *Ed.* 1.

18 Ed. 2.
Entry 74.
Nat. B. 158
con.

(*a*) See *ibid. Aſſ.* 11. 91. That the Father may enter for the Forfeiture.

Writ

Writ of Entry ad communem Legem.

G THE Writ of Entry *ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Curteſy, or for Life, do alien in Fee, or for Life of another, or in Tail, the Lands which they hold, *&c.* (*a*) after their Death, he in the Reverſion, who hath it in Fee, or for Life, ſhall have that Writ of Entry *ad communem Legem*; and the Writ ſhall be ſuch, *&c.*

H *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* B. *&c.*
which he claims to be his Right and Inheritance, and into which the ſame A. *hath*
not Entry but by C. *who was the Wife of* D. *(who demiſed it to him) who held it* [208.]
in Dower of the Gift of the aforeſaid D. *ſome time her Huſband, the Father (or*
other Anceſtor) of the aforeſaid B. *whoſe Heir*, &c. *as he ſaith*, &c. *and unleſs*, &c.

A And that is a Writ for the Heir in the Reverſion, who hath the ſame by Deſcent, and may be in the *Per*, *Cui* and *Poſt*.

B And if a Woman recover Dower, and afterwards alieneth in Fee, and di- 4 Ed. 2.
eth; then the Writ of Entry *ad communem Legem* ſhall mention the Recovery, Brief 794.
&c. And if the Tenant by the Curteſy alieneth in Fee, and dieth, the Heir ſhall have ſuch Writ:

Command, &c. *that*, &c. *he render to* B. *&c. which he claims*, &c. *into which the ſame* A. *hath not Entry but by* C. *who held it by the Law of* England *after the Death of* D. *ſome time his Wife*, *the Mother of the aforeſaid* B. *whoſe Heir he is*, *as he ſaith*, &c.

And may be brought in the *Per*, *Cui* and *Poſt*, as the Caſe is.

And if Tenant by the Curteſy alien the Fee, and dieth, he in the Reverſion who is Heir in Fee-ſimple, may ſue that Writ, or an Aſſiſe of Mortdaunceſtor given by the Statute of *Glouceſter*, *cap.* 3.

C And if Tenant for Life alieneth in Fee, and dieth, he in the Reverſion may have that Writ in divers Forms: One, if he have the Reverſion by Deſcent, the Writ ſhall be,

Command A. *that*, &c. *he render*, &c. *which he claims*, &c. *and into which the ſame* A. *hath not Entry but by* C. *to whom the aforeſaid* B. *or* C. *Father (or other Anceſtor) of the aforeſaid* B. *whoſe Heir he is*, *demiſed it for the Life of him the ſaid* C. *as he ſaith*, &c.

And he may leave out theſe Words in the Writ, *Which he claims to be his Right and Inheritance*, &c. when the Demandant made the Grant to the Tenant for Term of Life who aliened, *&c.*

D And that Writ may be in the *Per*, *Cui* and *Poſt*, as the Caſe is. And he
E may bring a Writ of *ad Terminum qui præteriit*, if he will, if the Tenant for
Term of Life doth alien, and dieth, as it ſhall pleaſe him.

(*a*) And yet the Death ſhall not be ſhewn by the Writ. 16 *Ed.* 3. *Brief* 667.

And if Tenant for Term of Life do grant over his Eſtate unto another, and he in the Reverſion granteth the Reverſion in Fee, and the Tenant doth attorn; and afterwards the ſecond Grantee doth alien in Fee, the Grantee in the Reverſion ſhall have ſuch Writ: F

Into which the ſame A. *hath not Entry but by* C. *(who demiſed it to him) who held it for his Life of the aforeſaid* B. *of the Aſſignment which* I. *who demiſed it to the aforeſaid* C. *for the ſame Term, made thereof to the aforeſaid* B. *as he ſaith*, &c.

And it may be in the *Per*, *Cui* or *Poſt*, as the Caſe is; and in the Writ which is in the *Poſt* ſhall be this Clauſe: G

And which after (*a*) *the Death of the aforeſaid* C. *ought to revert to the aforeſaid* B. *by the Form of the Aſſignment aforeſaid, as he ſaith, and whereof he complains*, &c.

Writ of Ceſſavit.

THE Writ of *Ceſſavit* lieth in divers Ways: For one Writ is where there is Lord and Tenant, and the Tenant will not pay (*b*) his Rent, nor do his Services, as Suit, *&c.* to his Lord as he ought to do, nor hath ſufficient Goods or Chattels upon the Land to be diſtrained for the Rent or Services behind; but ſuffereth the Lands to lie freſh, not occupied for two Years following together; then the Lord of whom the Lands are holden may have the Writ againſt the Tenant, and if it be found for him, he ſhall recover the Land, if the Tenant will not find Sureties to pay the Rent then after; and that Writ is of ſuch Form: H

Tenant in Dower ſhall have a Ceſſavit, and lay the Seiſin in her Huſband: 1 Ed. 1. Ceſſavit 54. 43 Ed. 3. 15. 9 H. 7. 16. He for Life ſhall have Ceſſavit, but not Leſſee for Years, for that is a Præcipe. 12 R. 2. Ceſſ. 45. Ceſſavit of a Rent, 5 H. Ceſſavit of Advowſon, 23 Ed. 3. Ceſſ. 46. 43 Ed: 3. 15. acc.

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *one Meſſuage*, &c. *which he the ſame* A. *holds of him by certain Services, and which ought to revert to him the ſaid* B. *by Form of the Statute provided by the Common Council of our Realm, becauſe the aforeſaid* A. *hath now ceaſed in doing the aforeſaid* (*c*) *Services for two Years, as he ſaith*, &c.

(*a*) But *Note*; The Writ in the Degrees does not make Mention of the Death of the Tenant for Life. See 16 *Ed.* 3. *Brief* 661.

(*b*) *Note*; If the Lord brings a *Ceſſavit*, and ſuppoſes the Tenure to be by two Shillings Rent, where he holds only by Fealty, and the Tenant traverſes the Tenure, and it is found againſt him, he ſhall be charged with the Rent. 24 *Ed.* 3. 72.

He may tender the Arrears without ſaving of his Default. 27 *Ed.* 3. 89. The Tenant took the Quantity of the Services by Proteſtation, and pleads over, *&c.* and after made Default, and at the *Petit Cape* tenders the Arrears according to his Proteſtation, and there they were at Iſſue on the Quantity, *&c.* *Note*; If the Tenant will ſave his Tenancy, and tender all the Arrears, he ought alſo to tender Damages, 21 *Ed.* 3. 23. taxed by the Court.

In a *Ceſſavit* for Suit of Court he tenders Damages for not coming, by Tax of the Court, 17 *Ed.* 3. 17. and it is no Plea, that Part of the Services are not in Arrear. 30 *Ed.* 3. 22.

(*c*) See a *Ceſſavit* by ſeveral *Præcipes* againſt *A.* and *B.* that *A.* and *B. de eo tenent & reverti debent eo quod* A. and B. *ceſſaverunt*. 20 Ed. 2. Brief 826.

And that Writ is given by the Statute of *Weſt.* 2. *cap.* 21. and may be brought in the *Per*, *Cui* and *Poſt*.

The *Per* thus: *Into which the ſame* A. *&c. but by* C. *who demiſed it to him, who held it of the aforeſaid* B. *by certain Services, and which ought to revert to him the ſaid* B. *&c.* (until) *becauſe the aforeſaid* A. or, *becauſe the aforeſaid* C. *hath now ceaſed in doing the aforeſaid Services for two Years.*

And it ought to be alledged in the Writ by whom the Ceaſer was.

And in the *Per* and *Cui* thus: *Into which,* &c. *but by* C. *to whom* D. *demiſed it, who held it of the aforeſaid* B. *&c.*

(*a*) And in the *Poſt* thus: *Into which,* &c. *but after the Demiſe which* A. *who held it of the aforeſaid* B. *by certain Services, made thereof to* A. *of* E. *and which ought to revert to him the ſaid* B. *becauſe the aforeſaid,* &c. *as he ſaith,* &c. *and whereof he complains,* &c. *and unleſs,* &c.

48 Ed. 3. 4. The Seiſin was alledged in the Feoffor and the Ceſſer in the Feoffee, 39 Ed. 3. Br. Ceſſ. 19. acc. Note, That if the Feoffee himſelf ceaſe, the Writ ſhall not be in the Per, but general: Cont. If the Feoffor ceaſe before the Feoffment; ſo if the Diſſeiſee ceaſe before the Diſſeiſin, the Writ ſhall be in the Poſt. 21 Ed. 3. 44. Br. Ceſſ. 17.

And there is another Form of *Ceſſavit*, without making Mention of any Entry, thus:

29 Ed. 3. Ceſſavit 43.

Command W. *of* F. *and* A. *his Wife, that,* &c. *they render to the Abbot of* S. *two Meſſuages which* I. *of* B. *held of him by certain Services, and which ought to revert to him the ſaid Abbot,* &c. (*b*) *becauſe the ſaid* W. *and* A. *have now ceaſed in doing,* &c.

19 Ed. 3. Brief 149. 17 Ed. 3. 57. 33 H. 6. 45.

I And the *Ceſſavit* lieth for a Suit of Court; (*c*) but the Donor in Tail ſhall not have a *Ceſſavit* againſt the Tenant in Tail: But if a Man maketh a Gift in Tail, the Remainder over in Fee unto another, or unto the right Heirs of the Tenant in Tail, there, in that Caſe the Lord of whom the Lands are holden *immediate* ſhall have a *Ceſſavit* againſt the Tenant in Tail, becauſe that he is Tenant to him, *&c.* 33 *H.* 6. 53. 28 *Ed.* 3. 9. 19 *Ed.* 3. *Ceſſ.* 30.

13 Ed. 3. Ceſſ. 29. 44 Ed. 3. 27. 14 H. 6. 15. 19 Ed. 2. Ceſſ. 30. 28 Ed. 3. 95. ibid. 34 & 35. acc. But there it is ſaid, That if the Tenant ceaſe, and makes a Gift in Tail, that the Lord may have Ceſſavit in the Per.

(*a*) 20 *H.* 6. 28. A Recovery in the *Poſt* againſt a Feme Covert.

(*b*) *Eo quod prædict'* W. and A. *&c.* See ſuch a Writ awarded good; for by *Parning*, he cannot ſuppoſe none to be his Tenant, but him by whoſe Hands he was ſeiſed, 11 *Ed.* 3. *Brief* 477. 14 *Ed.* 3. *Brief* 269. and ſee accordant; for it may be *A.* is in by Diſſeiſin, and yet *B.* ſhall be ſaid Tenant to the Lord; ſo if the ſame Tenant leaſes for Life, or in Tail to *A.* who ceſſes, no other Writ lies; wherefore the Writ was awarded good, 21 *Ed.* 3. 44. See 39 *Ed.* 3. 13. And ſee what Writ does not lie in this Caſe. *Kelw.* 105, 131. 14 *Ed.* 2. *Brief* 815.

(*c*) So it is adjudged; yet if the Lord recovers, the Iſſue ſhall have a Formedon, 28 *Ed.* 3. 45. and it ſeems on the ſame Reaſon, if the Tenant makes a Leaſe for Life, the Remainder in Fee, a *Ceſſavit* lies againſt the Leſſee for Life, ſuppoſing him to be his Tenant. But it ſeems, though he does recover, yet after the Death of Tenant for Life, he in Reverſion ſhall have (avoid) his Recovery againſt the Lord; but if the Tenant makes a Leaſe for Life, or a Gift in Tail, ſaving the Reverſion to himſelf, if afterwards a Ceſſer be, the Lord ſhall have a *Ceſſavit*; but he ought not to ſuppoſe, that the Tenant in Tail is his Tenant; for then this Writ ſhall abate; but he ſhall have the Writ here next adjacent. And it ſeems in ſuch Caſe, that he in Reverſion is Tenant to the Lord, and a Default in him of Non-payment, as well as in the other, ſhall bind him, and ſo the Books ſeem to intend. 28 *Ed.* 3. 95, 96. 45 *Ed.* 3. 27. So a Recovery in a *Ceſſavit* againſt a Diſſeiſor, ſhall bind the Diſſeiſee, 20 *H.* 6. 28. a Recovery

10 Ed. 4. 1 & 2. 37 H. 6. 45. [209.] He pleads that the Land was ſufficient to his Diſtreſs without ſaying *overt*, and good:

K And if a Man ceaſe to pay his Rent and Services for two Years, and incloſe the Land, ſo as the Lord cannot diſtrain, if he break not the Gates or the Hedges of the Land which make the Incloſure, the Lord ſhall have a *Ceſſavit*, although the Tenant hath ſufficient Cattle upon the Land to be diſtrained for the Rent. For the Land ought to be open, and alſo there ought to be ſufficient to diſtrain for the Rent, *&c.* But the Land is not open to his Diſtreſs, *&c.* and ſo open to his Diſtreſs is a good Plea, without ſaying more in ſuch Caſe. *M.* 2 *H.* 4, 5. 2. 30 *H.* 6. *Ceſſ.* 7.

2 H. 4. 5. 35 H. 6. Ceſſ. 7. acc.

A And if the Cattle of a Stranger do eſcape into the Lands, thoſe Cattle are not ſufficient or overt to his Diſtreſs: But if they be the Tenant's Cattle, it is otherwiſe. 40 *Ed.* 3. 11. 50 *Ed.* 3. *Ceſſ.* 10.

35 H. 6. Ceſſ. 7. acc. But if a Man occupy at Will his Goods are ſufficient.

B If three Men hold by one intire Rent, as by a Horſe, and the Lord doth recover two Parts of the Land againſt two of them, and the third findeth Sureties, *&c.* the whole Rent is extinct by that Recovery. 14 *Ed.* 3. *Ceſſ.* 28. 13 *Ed.* 3. 47. 10 *H.* 4. 1.

3 Ed. 2. Avow. 206. Br. App. 20. 3 Ed. 3. 47. Ceſſ. 40.

C And a Man ſhall not have one *Ceſſavit* for Lands which are holden by ſeveral Services; but he ought to ſue ſeveral Writs (*a*). 20 *Ed.* 3. *Ceſſ.* 23. 11 *Ed.* 2. *Ceſſ.* 50. 14 *H.* 6. 25. 28 *Ed.* 3. 9. 45 *Ed.* 3. 27. 20 *H.* 6. 46. *Ant.* 179.

4 H. 6. 29. 10 H. 7. 24.

D (*b*) If the Lord do diſtrain pendent his Writ of *Ceſſavit* againſt his Tenant, the Writ ſhall abate.

45 Ed. 3. 27. 14 H. 6. 25. 48 Ed. 3. 4.

E And the Lord ſhall have a Writ of *Ceſſavit* againſt Tenant for Life, where the Remainder is over in Fee to another (*c*). 20 *Ed.* 3. *Ceſſ.* 32, 33, 38. 48 *Ed.* 3. 4. 12 *Ed.* 4. 7. 5 *Ed.* 3. 70. 6 *Ed.* 3. 45. 4 *Co.* 11. *b.* 23 *Ed.* 3. 21. *Ceſſ.* 21.

Recovery againſt a Feme Covert binds the Huſband. 12 *Ed.* 4.—A Recovery againſt the Huſband and Wife binds the Wife. See 3 *Ed.* 3. 26. *contr.* in a *Ceſſavit*, 7 *H.* 4. 20. 10 *H.* 6. 5. Tenant for Life ceſſes, if the Lord recovers againſt him, it ſhall not bind him in Reverſion or Remainder, 28 *Ed.* 3. 95. 45 *Ed.* 3. 23. but during the Life of the Leſſee he ſhall be ouſted of Waſte, or Entry *in conſimili Caſu.* *Note*; Feoffee or Tenant for Life ſhall not have Aid of his own Ceſſer, 28 *Ed.* 3. 96. *contr.* *Banton.* 3 *Ed* 3. 26. If *A.* Tenant of three Acres ceſſes, and aliens to three ſeveral Men an Acre to each, three ſeveral *Ceſſavits* lie, and there ſhall be ſpecial Counts; but if he leaſes one Acre to *B.* for Life, and another to *C.* in Tail, and afterwards ceſſes, a *Ceſſavit* does not lie againſt *B.* or *C.* as to thoſe two Acres, but he ſhall have a *Ceſſavit* for the third Acre, and count ſpecially. *Note*; By the Ceſſer of the Meſne a *Ceſſavit* does not lie for the Lord, although the Meſne after the Ceſſer do purchaſe the Tenancy. *Kelw.* 105.

(*a*) See 20 *Ed.* 3. *Ceſſavit* 33. accordant 21. The Tenant ſays, That the Demandant then, or before the Writ purchaſed, took a Diſtreſs for the Services in the mean time arrear, and ſhewed what Diſtreſs. *Parning:* Will you ſay, That the Diſtreſs was ſufficient for the Rent arrear? *Rolf* agreed to ſay it was ſufficient. *Gra.* had you no Diſtreſs? See 11 *Ed.* 3. *Ceſſ.* 2.

(*b*) See 21 *Ed.* 3. 18. where Acceptance of Services pending the Writ ſhall abate it, and falſify the Judgment had againſt the Feoffor.

(*c*) He ſhall have a Writ, ſuppoſing that he held of him and ceſſed, 45 *Ed.* 3. 27. and ſo held on the ſame Reaſon, 28 *Ed.* 3. 95. But if the Tenant leaſes for Life generally, ſaving the Reverſion to him, a *Ceſſavit* lies, but he ought not to ſuppoſe, that the Leſſee for Life is his Tenant.

(*a*) The Quantity of the Service is not traverſable in a *Ceſſavit*, but the ſame ſhall be taken by Proteſtation.

The Seiſin of the Service is not traverſable in a *Ceſſavit*, but in *Ceſſavit* generally the Tenure is traverſable.

2 Ed. 3. 28. 8 Ed 3. 47. Nat. Br. 139. 20 Ed. 3. Ceſſ. 47.

F The Aunt and Niece ſhall not join in a *Ceſſavit* for a Ceſſer made before the Title accrued to the Niece: But for a Ceſſer in both their Lives they ſhall join in a *Ceſſavit*; *aliter* of Jointenants. *N. Br.* 139.

ſupra B. 48 Ed. 3 4.

And a Man may have a *Ceſſavit* againſt ſeveral Perſons, and ſeveral Tenants by ſeveral *Præcipes*, *&c.* but not by one *Præcipe:*

Ceſſ. before Seiſin: 33 Ed. 3. Wilby Ceſſ. 42.

G A *Ceſſavit* doth not lie for him in the Reverſion againſt Tenant for Life, nor againſt Tenant in Dower, but againſt Tenant by the Curteſy by the Lord Paramount, becauſe he is Tenant to the Lord Paramount: *Tamen quære* of that Caſe. But Tenant by the Curteſy, Tenant in Dower, or Tenant for Life, ſhall have a *Ceſſavit* againſt the Tenant who ceaſeth,

20 Ed. 3. Ceſſ. 47. 11 Ed. 3. Ceſſ. 50. 13 Ed. 2. ib. 51. 26 Ed. 3. Ceſſ. 61.

H It is a good Plea in a *Ceſſavit* to ſay, that he did not ceaſe for two Years before the Writ brought.

7 H. 4. 20.

I And by the Opinion of *Thorpe* and *Hankford*, a Man ſhall have a *Ceſſavit* againſt an Abbot or a Prior of the Lands of their Foundation; but I know no Difference but that the Lord ſhall have a *Ceſſavit* againſt an Abbot or a Prior as well as againſt others, of the Lands which he holdeth of them by Rents or other Services; but for the Lands which they hold in *Frankalmoigne* a *Ceſſ.* doth not lie for not doing the Service, neither doth a *Ceſſavit* lie for not doing Homage or Fealty.

18 Aſſ. 1. Br. Ceſſ. 20.

K And if a Man holdeth Lands in ſeveral Counties by one Tenure and one Service, if he ceaſe, *&c.* a *Ceſſavit* doth not lie. *Quod vide M.* 18 *Ed.* 3. *t.* *Aſſiſe* (*b*).

Poſt. 211. E. 6 H. 7. 2, 7. 3 H. 6. 45. 18 Aſſ. pl. 1. 18 Ed. 3.

L And there is another Writ of *Ceſſavit* grounded upon the Statute of *Weſt.* 2. *cap.* 41. That if a Man give Land unto a religious Houſe, or unto another, to find a Chaplain to ſing Divine Service, or to find certain Tapers to burn before ſuch an Image, or to diſtribute certain Bread and Beer every Week unto poor Men. Now if theſe Services be not done for two Years, nor ſufficient Diſtreſs upon the Lands for the Time to diſtrain for thoſe Services, then he or his Heir who gave the Lands, ſhall have a Writ of *Ceſſavit*, thus:

The King to the Sheriff, &c. *Command* S. *Biſhop of* Worceſter, *that*, &c. *he render to* H. *Earl of* D. *one Meſſuage*, &c. *in the Town of* W. *which* M. *lately Earl of* D. *Brother of the aforeſaid* H. *whoſe Heir he is, gave to* W. *ſome time Biſhop of* W. *and his Succeſſors*, *Biſhops of the Place aforeſaid*, *to celebrate yearly the Obits of* I. *the Brother*, *and* B. *the Mother of the aforeſaid* T. *and alſo the Obits of the ſame* T. *and* R. *of* H. *after their Deceaſe*, *and which ought to revert to the aforeſaid Earl by Form of*, &c. *becauſe the aforeſaid Biſhop hath now ceaſed for two Years in celebrating the Obits aforeſaid*, *as he ſaith*, &c. *Witneſs*, &c.

(*a*) But it ſeems he may plead, that he held this Land and others by the ſame Services, as well as in an Avowry. 2 *Ed.* 4. 27. 18 *Ed.* 4. 17. 23 *Ed.* 3. 21.

(*b*) In *Ceſſavit* the Defendant pleads, that the Plaintiff had diſtrained for Fealty pending the Writ, and thereupon Iſſue joined. 20 *Ed.* 3. *Ceſſ.* 33. *Vide ant.*

And in another Form for a Chauntry: *Command the Abbot of* N. *that*, &c. *he render to* B. *and* C. *his Wife*, *one Meſſuage*, &c. *which* R. *the Great Grandfather of the aforeſaid* C. *whoſe Heir* (*a*) *ſhe is*, *demiſed to* E. *ſome time Abbot of* N. or *to the ſame Abbot and his Succeſſors*, *Abbots of* N. *to find a certain Canon for celebrating Divine Services for the Souls of the Anceſtors and Succeſſors of the ſame* R. *in the Abby of* N. *and which ought to return to the aforeſaid* B. *and* C. *by the Form of the Statute provided by the Common Council of our Realm in caſe of ſuch Demiſe*, *becauſe the ſaid Abbot hath now ceaſed in finding the aforeſaid Canon for two Years*, *as they ſay*, *and unleſs*, &c.

M (*b*) And the like Writ may be ſued againſt a Parſon for Lands given to his Predeceſſor in Fee to ſay Divine Service in ſuch a Chapel from three Weeks unto three Weeks.

N (*c*) And ſo a Man ſhall have ſuch Writ for Lights, or for drinking for the Poor, or other Alms-deeds, if the ſaid Alms-deeds be withdrawn for two Years together.

And where a religious Man or other ſpiritual Perſon bringeth that Writ of *Ceſſavit*, it ſhall not be ſaid in the Writ, *Quod clamat eſſe jus & hæreditatem ſuam*, *&c.*

And a Man ſhall have a *Ceſſavit* for not doing of ſeveral Things which he ought to do, thus:

Command A. *&c. that*, &c. *he render to* B. *&c. which* T. *the Great Grandfather of the aforeſaid* B. *gave to* W. *ſome time Rector of*, &c. *and his Succeſſors*, [210.] *Rectors of*, &c. *to find a certain Chaplain to celebrate Divine Service for the Souls of the Anceſtors of the ſame* T. *in the Church of*, &c. *and two Wax Lights to burn the whole Time wherein that Maſs is ſaid*, *and which ought to revert to him the ſaid* B. *becauſe the aforeſaid*, &c. *hath now ceaſed for two Years in finding the aforeſaid Chaplain and Wax Lights*, &c.

And the like Writs may be made in the *Per*, *Cui* and *Poſt*.

A There is another Writ of *Ceſſavit* founded upon the Statute of *Glouceſter*, *c.* 4. where a Man giveth certain Lands in Fee-farm to find him certain Eſtovers to burn in the Winter, *&c.* or clothing, or to pay the fourth Part of the Value of the Land yearly, and afterwards he ceaſeth, and lets the Land lie freſh, not manured for two Years together; then he or his Heir who gave the Land ſhall have the Writ of *Ceſſavit* which followeth, *viz.*

The King to the Sheriff, &c. *Command* A. *that*, &c. *he render to* B. *one Meſſuage*, &c. *which the ſame* B. *demiſed to him in Fee-farm*, *rendring therefore by the Year to him the ſaid* B. *the third Part* or *fourth Part of the true Value of the Meſſuage aforeſaid*, *and which ought to revert to him by the Form of the Statute thereupon provided by the Common Council of our Realm*, *becauſe the aforeſaid* A. *hath now ceaſed in the Payment of the aforeſaid Farm for two Years*, *as he ſaith*, *and unleſs*, &c.

(*a*) See this Writ affirmed good in all Points, 30 *Ed.* 3. *Brief* 29.

(*b*) *Note* 28 *Ed.* 3. 96. and 3 *Ed.* 3. 26. A Recovery was againſt a Parſon on ſuch a *Ceſſavit de Cantuario*, and held it ſhould bind his Succeſſors, 7 *H.* 4. 20. 10 *H.* 6. 5. but *contr.* of a *Ceſſavit per biennium*, 3 *Ed.* 3. 26. but by the Juſtices, a *Ceſſavit de Cantuario* does not lie for Lands that are Parcel of the Foundation of the Priory or Chauntry. 7 *H.* 4. 20.

(*c*) *Quære*, if the Tenant may tender the Arrears, and to whom; and by *Hankſ.* it ſhall be to the Demandant, but *per Thirn.* not ſo in a *Ceſſavit* of a Chauntry, 12 *H.* 4. 24. See Tender of Arrears of Houſes and Chauntry Lands according to the Diſcretion of the Juſtices. 14 *H.* 4. 4.

And in the *Per*, thus: *And into which the ſame* A. *hath not Entry, but by* E. *the Father of the aforeſaid* B. *whoſe Heir he is, who demiſed it to him in Fee-farm.* Or thus in the *Per* and *Cui*: *But by* D. *to whom the aforeſaid* B. *or* C. *the Father of the aforeſaid* B. *whoſe Heir he is, demiſed it in Fee-farm,* &c.

And in the *Poſt*, thus: *But after the Demiſe which the aforeſaid* B. *or* C. *Father of the aforeſaid* B. *whoſe Heir he is, thereof made to* D. *in Fee-farm,* &c. *hath ceaſed,* &c. *as he ſaith, and whereof he complains,* &c. *and unleſs,* &c.

B And if a Woman give Lands in Fee-farm, rendring to her the Moiety, or the third Part of the Value, and afterwards taketh Huſband, and the Tenant ceaſeth for two Years, and ſuffereth the Land to lie freſh, and doth not pay the Rent, the Huſband or Wife ſhall have a Writ of *Ceſſavit*, and the Writ ſhall ſuppoſe *which to the aforeſaid* A. *and* B. *his Wife ought to revert*, and not the Wife only.

C And *Note*, That theſe Gifts in Fee-farm, to render the third Part, or the fourth Part, or to find a Chaplain to ſay Divine Service, or to find him Clothing or Eſtovers, or to diſtribute, *&c.* upon which a Writ of *Ceſſavit* lieth, it behoveth that this were made before the Statute of *Quia emptores terrarum*, *&c.* upon which Feoffments a Tenure is reſerved and implied in the Gift. But if a Man at this Day, after the Statute of *Quia emptores*, will give Lands in Fee-farm to render the third or the fourth Part of the Value of the Land, or to find a Chaplain, *&c.* if the Tenant ceaſeth, *&c.* the Donor nor his Heir ſhall not have a Writ of *Ceſſavit*, becauſe there is not any Tenure betwixt them. *Quod vide M.* 45 *Ed.* 3. *t. Ceſſ.* 45 Ed. 3. 15. Ant. 208.

D But if a Man giveth Lands in Tail at this Day to find a Chaplain, or to render a third Part of the yearly Value, or to find Eſtovers yearly, if the Tenant ceaſeth of theſe Services, it is a Doubt whether the Donor ſhall have a *Ceſſavit* to recover the Lands. Ant. 208, 209. N. B. 140.

And it ſeemeth that the Donor ſhall have a *Ceſſavit*; for a Writ of *Ceſſavit* is given by the Statute of *Weſtm.* 2. *cap.* 41. for Lands given to find a Chaplain, or to find Tapers, or to diſtribute Alms to poor Men. But then it ſeemeth that the ſame is intended of Gifts in Fee-ſimple, becauſe that the Statute of *Weſtm.* 2. *c.* 41. ſaith, N. B. 141. D. 209.

That an Action ſhall lie for the Donor or his Heir to demand the Lands ſo given in Demeſn, as it is appointed in the Statute of Glouceſter *of Tenements demiſed to do, or render the fourth Part of the Value, or more, and upon which Feoffments a Tenure was reſerved and implied, becauſe the Statute of* Quia emptores, &c. *was made after the Statute of* Weſtm. 2.

And alſo before the Statute of *Quia emptores terrarum*; if a Man make a Feoffment in Fee, and doth not ſay of whom the Feoffee ſhall hold, *&c.* then the Feoffee ought to hold of the Feoffor and his Heirs. By which it appeareth, that if a Man at the Time of the making of the Statute of *W.* 2. gave Lands to hold in Fee-farm, rendring the Value, or the third Part, *&c.* that he held of the Feoffor and his Heirs, although that no Tenure was expreſſed therein. And the Statute of *Glouceſter* was made *Anno* 6 *Ed.* 1. and the Stat. of *Weſtm.* 2. made *Anno* 30 *Ed.* 1. and the Statute of *Quia emptores terrarum*, was made 18 *Ed.* 1. And therefore if a Man maketh a Feoffment in Fee at this Day, to find Tapers burning, or to render the third Part of the Value, or the like Services, he ſhall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other Remedy for the ſame, as I conceive.

- R. 2.
Ceſſ. 18.
N B. 141.

D And if Land be given before the Time of Memory to find a Chaplain to ſing in his Chapel within his Manor every Week; now by the Statute no Man ſhall have a *Ceſſavit* for the Ceſſor of ſuch Service, but the Donor or his Heir; but upon that ſpecial Matter, he ſhall have a ſpecial Writ for him who is ſeiſed of the Manor, if he and his Anceſtors have been ſeiſed of the Manor Time out of Mind, againſt him who ought to do Service. *T. Anno* 7 *H.* 2.

Ant. 209. I.

E And a *Ceſſavit* doth not lie againſt an Abbot or Prior for a Ceſſor of Services of Lands which they hold in *Frankalmoigne*, becauſe no Service certain is expreſſed in the Gift. Alſo it appeareth before the Statute, that the Lord could not have a *Ceſſavit* againſt the Tenant, but that he might ſeize the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, *Quod vide P.* 20 *H.* 3. But at this Day he cannot do ſo, but bring a *Ceſſavit.* 10 *H.* 3. *Ceſſ.* 60.

Writ of Contra formam Collationis.

Vi. 2 & 3 Ma. Dyer 109. Yet it ſeems by Br. Alienation 15. That Biſhop Dean and Chapter, and others who are not religious, are not within this Statute. 40 Ed. 3. 27. The Writ doth not lie but where the Land is given in Frankalmoigne.

F THE Writ of *Contra formam Collationis* lieth, where a Man giveth (*a*) Lands or Tenements to an Abbey, or other Houſe of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmoigne*, and afterwards the Abbot or the Convent do alien the ſame Land unto (*b*) another in Fee. Now he who gives the Land, or his Heir, may ſue this Writ of *Contra formam Collationis.*

[211.]
Br. Contra formam 501. 23 Ed. 3. Contr. form. pl. 3.
23 Ed. 3. pl. 3.
9 H. 7. 16.

A (*c*) The Donor or his Heir may ſue that Writ of *Contra formam Collationis*, and that Writ always ought to be ſued againſt the Abbot who aliened, or his Succeſſor, and not againſt the Tenant of the Land. But when he hath recovered the Land againſt the Abbot or his Succeſſor, then he ought to ſue forth a *Scire facias* againſt the Tenant of the Freehold of the Land, and the Tenant may plead in bar Matter, which may prove that the Demandant hath no Title, or that he hath releaſed his Title. And if he who recovereth by the *Contra* B
formam Collationis doth enter upon him who is Tenant of the Freehold of the Land, then it ſeemeth the Tenant ſhall have an Aſſiſe againſt him.

(*a*) So it extends to Lands given by others, as well as to thoſe given by the Founder; *contr.* 33 *H.* 6. 6. *per Moyle.*

(*b*) See 24 *Ed.* 3. 71. It ſeems, that if a Tenant in *Frankalmoigne* of an Advowſon of the King, aliens for nine Shillings, the King may preſent. *Dyer* 109. Alienation in Tail is within the Statute.

(*c*) See 18 *Ed.* 3. 5. 2 *H.* 4. 12. that it does not lie againſt the Succeſſor, upon the Words of the Writ given by the Statute; *per Thirn.* and *Hankſ.*

C And that Writ of *Contra formam Collationis*, lieth only for him or his Heirs, who gave the Land in *Frankalmoigne*, and not by any Stranger. But if he who ought to have the Action dieth, and doth not bring any Action for the ſame, yet his Heir may bring the Action for to recover the Land. For the Alienation doth give Right and Title to him who gave the Lands, or unto his Heirs for to recover the Lands, and to have the Lands again for that Alienation. And it lieth againſt the Succeſſor upon an Alienation made by his Predeceſſor. And yet ſuch Writ brought againſt the Succeſſor, upon the Alienation made by the Predeceſſor, was abated, *H.* 17 *Ed.* 3. But yet notwith- D ſtanding it ſeemeth the Writ well lieth, becauſe that the Right is given to him who gave the Lands, and unto his Heirs, to have the Lands again by the Statute, and that Right cannot die. For the Heir ſhall have the Action upon the Alienation made in the Life of the Father, becauſe the Right of the Action doth deſcend, and by the ſame Reaſon the Heir of the Donor ſhall have the Action againſt the Succeſſor upon Alienation made by the Predeceſſor, becauſe the Right doth accrue to the Donor or his Heir by Alienation, for which Cauſe it is Reaſon that he have the Action againſt the Succeſſor to recover that Right, and to prove the ſame; the Form of the Writ in the Regiſter is ſuch:

Contra formam Coll. 12 H. 4. 17. Hankford contra to Fitz-Herb.

The King to the Sheriff, &c. *Command the Abbot of* N. *that*, &c. *he render to* B. *one Meſſuage*, &c. *which was given to the ſame Houſe in Frankalmoigne by the aforeſaid* B. or *by* H. *the Father of the aforeſaid* B. *whoſe Heir he is*, *and which by the Alienation by him the ſaid Abbot*, or *by* R. *ſome time Abbot of* N. *the Predeceſſor of the aforeſaid Abbot againſt the Form of the Collation*, *thereof made in Fee*, *ought to revert to the aforeſaid* B. *as he ſaith*, &c. *and unleſs*, &c.

And that Writ of *Contra formam Collationis* doth not lie, although the Abbot alien in Fee, *&c.* but where the Abbot and Convent in Fee, *&c.*

21 H. 4. 68. Hankford

E And if a Man do recover in Value Lands againſt an Abbot, who entreth in the Warranty and loſeth, *&c.* the Founder ſhall have a *Contra formam Collationis* upon the ſame, as it appeareth in the Book. *M.* 45 *Ed.* 3. 19.

Old Aſſ. 14. It lieth of a Rent.

F If an Abbot and Convent alien an Advowſon in Fee, at the next Avoidance the Founder or his Heir may preſent unto the Advowſon, becauſe they cannot ſue a *Contra formam Collationis.* 20 *Ed.* 3. *Con. form. Coll.* 6.

28 Ed. 3. Contra formam Collationis 6.

G (*a*) And if an Abbot and Convent alien the Lands which are given by the King in *Frankalmoigne*, ſome ſay that the King may enter; but it ſeemeth that he ought for to ſue forth a *Scire facias* upon an Office found of the ſaid Alienation. See the Caſe, ſee *M.* 45 *Ed.* 3. 18.

H (*a*) And that Writ of *Contra formam Collationis* is given by the Statute of *Weſtm.* 2. *cap.* 41. and the Proceſs is Summons, *Grand Cape* and *Petit Cape.* 33 *H.* 6. 6. *con.*

I And a Writ of *Contra formam Collationis* lieth as well for Land which was not given for the Foundation of the Monaſtery, if it were given in *Frankalmoigne*, as for Lands of the Foundation; but it ought for to be given in

33 H. 6. 6. Litt. 31. 10 H. 7. 23. 27 H. 26.

(*a*) *Note*; The King as Founder ſhall have the Benefit of this Statute on an Alienation made by the Biſhop, with Conſent of the Dean and Chapter in Fee-farm. *Dyer* 109. 38 *H.* 8. *c.* 30. and 35 *H.* 8. *c.* 15. See the Proviſo there on Erection of a new Chapter. *Quære*, 5 *Co.* cited in the Margin of *Dyer ibid.*

Frankalmoigne before the Statute of *Quia emptores, &c.* For a Man could not give Lands after the Statute of *Quia emptores, &c.* unto an Abbot or Prior to hold in *Frankalmoigne*, becauſe he ought to hold of the Lord Paramount, of whom the Tenant held before. But the King at this Day may give Lands in *Frankalmoigne* to an Abbot or Prior, for that he is not bound by the Statute. And alſo the King may licenſe his Tenant to give Lands unto an Abbot or Prior in *Frankalmoigne* in Fee-ſimple, to hold in *Frankalmoigne*; for he may diſpence with the Statute, and grant ſuch Authority to his Tenant if he will. But it ſeemeth another Lord cannot grant ſuch Licence to his Tenant, by Reaſon of the Intereſts of the Lord Paramount: But the King and all the meſne Lords together may grant Licences unto the Tenants Paravail, who have the Fee of the Lands, that they may alien the ſame to an Abbot or Prior to hold of him in *Frankalmoigne*, or to grant the ſame unto a lay Perſon, to hold of him by certain Services, becauſe that the Statute of *Quia* K *emptores, &c.* was made only for the Advantage of the Lords, and therefore they all may diſpenſe with the Statute, which ſee *t. Contra formam Collationis, Lib. d' Ent.* 119. And there it appeareth, that the Heir ſhall have the Action againſt the Succeſſor of the Abbot, who aliened in the Time of his Anceſtor.

Writ of Formedon in the Deſcender.

THE Writ of Formedon in the Deſcender is grounded upon the (*a*) L Statute of *Weſtm.* 2. *cap.* 41. and lieth where a Man giveth Lands to one, and the Heirs of his Body begotten: Or unto a Man and a Woman, and to the Heirs of their Bodies begotten; or unto a Man and a Woman who is his Couſin in Frank-marriage, by (*b*) Force of which Gift they are [212.] ſeiſed, and afterwards he alieneth thoſe Lands, or is diſſeiſed of them, and dieth; his Heir ſhall have that Writ of Formedon in the Deſcender to recover thoſe Lands given in Tail.

(*a*) A Formedon lies for a younger Son inheritable by the Cuſtom, and he ſhall have a general Writ, but a ſpecial Count. 13 *H.* 4. *Garranty* 94.

(*b*) A ſpecial Writ was on the Reſervation of an Eſtate tail by a Fine which is recited in the Writ, 14 *H.* 4. 31. 1 *H.* 5. 10. and ſee there that he need not ſhew the Fine. 2 *H.* 5. 4. See a ſpecial Form of a Writ on a Feoffment to the Uſes of the Feoffor and the Heirs of his Body, and it recites the Feoffment to Uſes; and alſo the Statute of 27 *H.* 8. in the Writ (which had been better in the Count). *Fiſh* ver. *Brocket*, *Dyer* 181.

Note; If *A.* recovers Land againſt *B.* by Formedon in Deſcender of the Gift of *C.* where there is no ſuch Gift, and dies: If the Iſſue brings a Formedon againſt a Stranger, and the Gift is traverſed, it ſhall not maintain the Recovery, becauſe he who recovers by Suppoſal comes in paramount the Tenant: But it is otherwiſe on a Recovery in Value by Warranty; for there he againſt whom the Recovery is, is as Donor. *Kelw.* 123.

Note; On a Feoffment to the Uſe of one in Tail the Writ ſhall be general, and the Count ſpecial, *Raſt.* 339. and on a Demiſe, or a Recovery in Value, both the Writ and the Count ſhall be general; but there muſt be a ſpecial Replication. 15 *Ed.* 3. *Brief* 324.

And ſo upon every Gift in Tail of Lands or Tenements, if the Anceſtor doth alien the Lands or Tenements, or be diſſeiſed or deforced thereof, and dieth, he who is Heir unto the Lands by Force of the Gift ſhall have that Writ of Formedon in the Deſcender againſt him who is Tenant of the Lands or Tenements, or Pernor of the Profits of the ſame Lands or Tenements. But that Writ againſt the Pernors of the Profits is given by the Statute of *Anno* 1 *H.* 7. *cap.* 1.

A And in ſpecial Caſe a Man may have a Formedon in the Deſcender of the Profit apprender in any Lands or Tenements, or iſſuing out of any Lands or Tenements: As if a Man grant twenty Shillings or twenty Pounds, iſſuing out of any Land or Tenement, unto a Man and the Heirs of his Body begotten, or unto a Man in Frank-marriage with his Daughter. Now if the Donee alien that Rent, or is diſſeiſed of the Rent, and dieth, his Heir, who is his Son or Daughter, ſhall have the Writ of Formedon in the Deſcender of that Rent. 1 Inſt. 21. b. 22 R. 2. Diſcontin. 50.

B. (*a*) And ſo if a Man grants the Moiety of the Profits ariſing out of his Mill unto another Man, and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of the Profits, the Heir ſhall have a Formedon in the Deſcender for thoſe Profits; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* W. *Maſter of the Hoſpital of Saint* Thomas the Martyr *of* S. *that*, &c. *he render to* I. C. *the Moiety of the Iſſues forth coming of two Mills of him the ſaid Maſter in* M. *which* B. *ſome time Maſter of the Hoſpital*, &c. *gave to* W. *of* C. *and the Heirs of his Body iſſuing, and which after the Death of*, &c.

And ſo it ſeemeth, that (*b*) if a Man granteth to one and the Heirs of his Body, Paſture for twenty Oxen, or for an hundred Sheep, *&c.* and the Donee die, and his Son, who is his Heir, is deforced thereof; then he ſhall have a Formedon in the Deſcender; and the Writ ſhall be,

The King to the Sheriff, &c. *Command*, &c. *that*, &c. *he render to* A. B. *Paſture for twenty Oxen and one hundred Sheep in one hundred Acres of Land in* M. *which*, &c.

But if a Man granteth Common of Paſture to one and the Heir of his
Body begotten, which hath Cattle, and the Donee dieth, and the Heir is de-
forced of the Common, the Heir ſhall not have a (*c*) Formedon in the De-
ſcender of the Common, but a *Quod permittat*, in the Nature of a Formedon,
and ſhall count upon the Gift and the eſpecial Matter. But the Writ of For-
medon is an Action aunceſtrel: For if he who is ſeiſed by Force of the Tail Ant. 124.
be diſſeiſed of the Land, he ſhall have an Aſſiſe of *Novel Diſſeiſin*, or an Ac- 42 Ed. 3. 20.
C tion of Treſpaſs, at his Pleaſure, and not a Formedon. And what Manner of 44 Ed. 3. 40. contr. but it is
Gift ſhall be ſaid a Gift in Tail, and what not, appeareth by Mr. *Littleton* in otherwiſe in a Formedon.

(*a*) See 16 *Ed.* 3. *Formedon* 29. and it ſhall bind the Eſplees in taking the Corn, *&c.* and ſee there ſuppoſed that the Corn Mill be turned into a Fulling Mill, and he demands the Profits; yet if Livery had been, he might have demanded the Moiety of the two Mills. 45 *Ed.* 3. *Feoffments* 90. *Dower* 50. See ſuch a Formedon awarded good, 18 *Ed.* 3. 56.

(*b*) See a good Diverſity herein, 27 *H.* 8. 12. *per Shelly*, 4 *Ed.* 2. *Brief* 793, 794.

(*c*) See a Formedon in Deſcender of a Serjeanty of the Cathedral of *Lincoln*, brought againſt the Biſhop there, and one *J. S.* and adjudged good without being forced to a *Quod permittat*. 18 *Ed.* 3. 27.

his Chapter of Eſtate-tail; and therefore it is not neceſſary to expreſs the ſame
here. But the Forms of the Writs of Formedon are many, as appeareth by D
the Regiſter, thus:

Vide 2 Eliz. *The King to the Sheriff*, &c. *Command* A. *that*, &c. *he render to* B. *the Ma-*
Dyer 216. *nor of* N. *with the Appurtenances which* C. *gave to* D. *and* E. *his Wife*, *and the*
Heirs of the Bodies of them the ſaid D. *and* E. (*a*) *iſſuing*, *and which after the*
Death of the aforeſaid D. *and* E. *ought to deſcend to the aforeſaid* B. *the Son and*
Heir of the aforeſaid D. *and* E. *by the Form of the Gift aforeſaid*, *as he ſaith*,
and unleſs, &c.

22 H. 6. 36. (*b*) And if the Gift be made in Frank-marriage, then the Form of the Writ E
is ſuch: *Which* C. *gave to* B. *in Frank-marriage with the Daughter of the ſame*
C. *and which after the Death of the aforeſaid* D. *and* E. *ought to deſcend to the*
aforeſaid B. *the Son and Heir of the ſaid* D. *and* E. *&c.*

49 Ed. 3. 21. (*c*) And in this Writ of Formedon he ought for to make Mention of every F
48 Ed. 3. 7. Man who was ſeiſed by Force of the Tail, and to name him Son and Heir in
11 H. 4. 72. his Writ, in this Manner: *And which after the Death of the aforeſaid* D. *and*
46 Ed. 3. 9. E. *and* F. *the Son and Heir of them the ſaid* D. *and* E. *ought to deſcend to the*
2 H. 4. 19. *aforeſaid* B. *the Son and Heir of the ſame* F. *&c.*

49 Ed. 3. 21. But if any of the Heirs in Tail were not ſeiſed by Force of the Tail, but G
11 H. 4. 72. over-live their Father, and die before that they enter into the Land, or have
11 H. 7. 3. any Seiſin thereof; then they need not for to name them Heirs in the Writ,
8 Ed. 3. 11. but only in this Manner:
46 Ed. 3. 9.
27 Ed. 3. 81. *And which after the Death of the aforeſaid* D. *and of* E. *the Son of the ſame*
D. *and of* F. *the Son of the aforeſaid* E. *ought to deſcend to the aforeſaid* B. *the*
Son of the aforeſaid F. (*d*) *and Couſin and Heir of the aforeſaid* D. *&c.*

11 H. 6. 20. And ſo he ought always to make the Demandant Couſin and Heir, or Son H
8 Ed. 2. 11. and Heir to him (*e*) who was laſt ſeiſed of the Tail, as the Caſe is; and the
22 H. 6. 36. ſureſt Way for the Demandant is, to make every Man who is named in the
5 Ed. 3. pl 67.
Writ,

(*a*) *Quod dedit* B. *&* C. *uxori ejus & hæredibus quos idem* B. *de Corp' ipſius* C. *procrearet*, *& quæ poſt mortem præd'* B. *&* C. *&* D. *filii hæredis eorum* B. *&* C. *de corpore ipſius* C. *per ipſum* B. *procreat'*, *&c.* And held good on ſuch a ſpecial Gift, or otherwiſe he might have had this ſpecial Writ here. 3 *Ed.* 3. 32. 12 *H.* 4. 1. adjudged. And *Note*; If the Writ be *ad præfat'* B. it ſhall abate. 15 *Ed.* 2. *Brief* 818.

(*b*) It ſeems that the Iſſue after the fourth Degree may have a Formedon, ſuppoſing the Gift to be general; or he may ſuppoſe it made in Frank marriage. 12 *H.* 4. 9.

(*c*) *A.* the Great Grandſather was ſeiſed, but not *B.* the Grandfather; but *D.* the Father was afterwards ſeiſed, and *E.* the Son brings a Formedon, and made each one Heir to the other, and held good: Or he may ſay, *Eo quod poſt mortem* A. *&* B. *filii dicti* A. *&* C. *filii dicti* B. *conſanguinei & hæredis dicti* A. *præfato* D. *filio & hæredi dicti* C. *deſcendere debet*, *&c.*

(*d*) So *Note*; In this Writ he ſhews *Coſinage*, or Conſanguinity; but in a *Scire ſacias* it is ſufficient if he ſhews it *dehors*, 8 *H.* 4. 21. *Et quod poſt mortem* B. *&* A. *filii & hæredis prædict'* B. *&* C. *filii & hæredis ejuſdem* B. *&* D. *conſanguinei & hæredis prædict'* C. *&c.* and it was abated by Award; *contr.* if he had ſhewn how Coſin in his Count, 12 *H.* 4. 1. 49 *Ed.* 3. 21. 38 *Ed.* 3. 24. See 5 *Ed.* 2. *Formedon* 51. *contr.* 11 *H.* 6. 43. 31 *Ed.* 3. *Brief* 338. it is neceſſary that he convey himſelf Heir to the Donee in the Writ, and not in the Count only, 11 *H.* 6. 21. A Gift was to the Grandfather, and to the Heirs of the Body of the Great Grandfather; he ought to make the Demandant Coſin and Heir to the Great Grandſather, or elſe each one Son and Heir to the other. *Dyer* 247.

(*e*) See 39 *Ed.* 3. 10. accordant. *Note*; In a Formedon the Demandant ought to make himſelf Heir to the Donee; and for this ſee 11 *H.* 6. 41. *Et quæ poſt mortem* A. *&* B. *filii & hæredis dicti* A. *&* C. *filii* B. *præfato* (the Demandant) *filio & hæredi dicti* C. and it was abated
by

Writ, Son and Heir in the Writ, although they were not ſeiſed of the Lands by Force of the Tail; for it is not material whether they were ſeiſed or not, although he name them Heir in the Writ; *quod vide Anno* 8 and 11 *H.* 6.

I And if Tenant in Tail hath Iſſue two Sons, and dieth, and a Stranger abateth, and entreth into the Land; and afterwards (*a*) the eldeſt Son dieth before he entreth into the Land, the youngeſt Son ſhall have a Writ of Formedon in the Deſcender, and needeth not name his eldeſt Brother Heir to his Father in the Writ, but only Son, becauſe he never had Seiſin of the Land, but only held the Eſtate; but if the eldeſt Brother had entred, and was ſeiſed by Force thereof, and died without Heir of his Body; then the youngeſt Son who is his Brother and Heir, ought to mention the eldeſt in the Writ, and him Son [213.] and Heir to his Father, and to make himſelf Brother and Heir unto him.

A And if the Heir in Tail be ſeiſed by Force of the Tail or not, and after N. Br. 141, enter into Religion, and be profeſſed, then his (*b*) Heir ſhall have a Writ of 144. Ant. 196. Formedon in the Deſcender in ſuch Form:

And which after the Death of the aforeſaid D. *and after that* E. *the Son and Heir of the aforeſaid* D. *took upon him the religious Habit, in which Habit he was profeſſed, as he ſaith, ought to deſcend to the aforeſaid* B. *the Son and Heir of the ſame* E. *&c.*

But if the Father maketh a Feoffment in Fee, or leaſeth the Land for Life, and entreth into Religion, and is profeſſed: Yet his Heir ſhall not have a Formedon in the Deſcender, *quia habitum religionis aſſumpſit, &c.* during the Father's Life, becauſe the Father may lawfully give his Lands during his Life; and after the Death of the Father, he may bring his common Writ of

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by Award. 1. Becauſe he did not make himſelf Heir to him who was laſt ſeiſed. 2. Becauſe when *B.* is ſuppoſed the only Son and Heir, you ſhall not make the Writ repugnant. 3. Becauſe the Writ does not make him Heir to the Donor; for it may be that *C.* was a younger Son; and therefore by *Martyn, A.* the Grandfather Donee is ſeiſed, *B.* the Father being Son and Heir of *A.* and *C.* the Son of *B. præfato* the Demandant, *filio & hæredi* C. is not good, altho' he makes himſelf Heir to him who was laſt ſeiſed.

(*a*) And ſee accordingly adjudged, that he need not name him Heir, or make the younger Son, who is the Demandant, Heir to him; but there ought to be Mention of him in the Writ and Count, becauſe he ſurvived his Father. 4 *Ed.* 2. *Formedon* 48. Yet it ſeems it is in the Election of the Demandant to mention his Brother that ſurvived, but held not the Eſtate, and held, that the one Writ or the other is good enough, 11 *Ed.* 2. *Formedon* 56. 11 *H.* 4. 7. 28 *Ed.* 3. 11. *per Herle,* 7 *H.* 6. 16. accordant; but in a Writ of Right it is neceſſary that he be mentioned, 18 *Ed.* 2. *Formedon* 59. *con. in Mortdaunceſtor*, and this is a good Writ, *&c.* in Right and Poſſeſſion.

See 10 *Ed.* 2. *Deſcents* 16. that the younger Son need not mention the Iſſue in this Caſe. So 35 *Ed.* 3. *Garranty* 75. 4 *Ed.* 2. *Formedon* 40. *con.* 11 *Ed.* 2. *pl.* 56. 12 *Ed.* 2. *Entry* 8. 35 *Ed.* 3. *Garranty* 73. that he who ſeiſed, ſhall be ſaid to hold the Eſtate, and no other. So 46 *Ed.* 3. 39. 42 *Ed.* 3. 20. and 37 *H.* 6. *Brief* 132. But 31 *Ed.* 1. *Deſcent* 315. *con.* 11 *Ed.* 2. *Formedon* 56. See *Bro. Omiſſion, &c.* 10. That if the eldet Brother dies in the Father's Life-time, the younger Son ſhall not mention him in the Formedon in Deſcender or Reverter, 18 *Ed.* 2. *Formedon* 59. 11 *H.* 4. 72. *Nat. Br.* 250. So if the Father does not ſurvive the Grandfather, the Son need not mention the Father in his Writ. 5 *Ed.* 2. *Formedon* 51. 8 *Ed.* 2. *pl.* 54.

Note; In a *Sci' fa'* to execute a Formedon in Remainder, the Plaintiff was driven to make mention of all thoſe on whom the Land deſcended in Tail, though they were never ſeiſed. 25 *Ed.* 3. 44. See 10 *Ed.* 2. F. *Deſcents.*

(*b*) See according to this Diverſity, *Kelw.* 104. yet ſuch Iſſue ſhall have Voucher and Age, living his Father, but ſhall hold the Lands, *&c.* charged with the Rent granted by his Father. *Ib.*

Formedon, if he will, or that ſpecial Writ, *quia habitum religionis aſſump'*, at his Election, as it ſeemeth.

And if Tenant in Tail goeth upon Pilgrimage, and dieth in his Journey, B
his Heir ſhall have a Formedon againſt a Stranger who entreth and abateth; and the Form of the Writ ſhall be,

And which after the Death of the aforeſaid D. *and after that* E. *the Son and Heir of the aforeſaid* D. *took a Journey of Pilgrimage towards Saint* James, *in which Journey he died, as he ſaith, ought to deſcend to the aforeſaid* B. *Son and Heir*, &c.

And if Tenant in Tail hath Iſſue two Daughters, and one of them hath C
Iſſue a Son and dieth, and afterwards the Tenant in Tail dieth, and a Stranger abateth; now the Daughter and the Son of the other Daughter ſhall have a Formedon in this Form:

That he render to B. *and* C. *one Meſſuage which* D. *&c. and which after the Death of the aforeſaid* E. *and of* F. *one of the Daughters of the ſame* E. *ought to deſcend to the aforeſaid* B. *the other of the Daughters of the aforeſaid* E. *and to* B. *the Son of the aforeſaid* E. *and Couſin and Heir of the aforeſaid* E. *&c.*

And if Tenant in Tail hath Iſſue two Sons, and dieth, and the eldeſt Son D
entreth, and hath Iſſue and dieth, and his Iſſue entreth and dieth without Iſſue of his Body, then the youngeſt Son, the Tenant in Tail, ſhall have ſuch Writ of Formedon, if he be deforced of the Land.

And which after the Death of the aforeſaid D. *and of* E. *the Son and Heir of the ſaid* D. *and of* F. *the Son and Heir of the ſaid* E. *ought to deſcend to the aforeſaid* B. *the Son and Heir of the aforeſaid* D. *and Couſin and Heir of the aforeſaid* F. (*a*).

And if a Man give Lands in Tail unto a Woman and the Heirs Males of E
her Body, and of *R.* her late Huſband, begotten; if the Woman die, and a Stranger doth abate, her Heir Male begotten by *R.* her Huſband, ſhall have a Formedon in this Manner:

Which C. *gave to* D. *who was the Wife of* R. *and to the Heirs Male of the Body of her the ſaid* D. *and the aforeſaid* R. *ſome time her Huſband, iſſuing, and which after the Death of the aforeſaid* D. *ought to deſcend to the aforeſaid* W. *Son and Heir of the ſame* D. *of her Body and the Body of the aforeſaid* R. *begotten*, &c.

And if a Man give Lands to *R.* and unto the Heirs which the ſaid *R.* ſhall F
beget on his firſt Wife, then the Form of the Writ of Formedon is ſuch:

Which W. *gave to* R. *and to the Heirs which the ſame* R. *ſhould beget of his firſt Wife, and which after the Death of the aforeſaid* R. *and* A. *the Daughter of* G. *whom he firſt married, ought to deſcend to the aforeſaid* I. *Son and Heir of the ſame* R. *of the aforeſaid* A. *his firſt Wife begotten*, &c.

And if a Man give Lands unto a Woman, and unto the Heirs which he G
himſelf ſhall beget on the Body of the ſaid Woman, and after they have Iſſue between them two Daughters, and one of them hath Iſſue a Daughter, and dieth, and after the Donor and Donee dieth, the Aunt and the Niece ſhall join in a Formedon for that Land, if they be deforced thereof; and the Writ ſhall be ſuch:

(*a*) Without ſaying *Maſculo*, for it appears by the Writ, 11 *H.* 6. 45.

Which R. *gave to* M. *and to the Heirs which he the ſaid* R. *ſhould beget of the Body of her the ſaid* M. *and which after the Death of the aforeſaid* M. *and of* A. *one of the Daughters* (*a*) *of the ſame* M. *begotten of her Body by the aforeſaid* R. *ought to deſcend to* I. *the other of the Daughters of the ſame* M. *begotten of her Body by the aforeſaid* R. *and to* I. *of* S. *the Son of the aforeſaid* A. *and Couſin and Heir of the ſame* M. *&c.*

H And if Lands be given to a Man and his Wife, and to the Heirs of their two Bodies, and they have Iſſue a Son, and die, and the Son is ſeiſed, and hath Iſſue three Daughters, which hath Iſſue, and die in the Life of their Father, and after one of the Daughters hath Iſſue, and claimeth in the Life of the Grandfather, and afterwards the Father and three Daughters die, the Coparceners of the three Daughters ſhall have a Formedon in ſuch Form:

And which after the Death of the aforeſaid E. *and* F. *and of* W. *the Son and Heir of the ſame* E. *and* F. *and of* A. M. *and* K. *the Daughters of the aforeſaid* W: *and of* Sarah *the Daughter of the aforeſaid* M. *ought to deſcend to the aforeſaid* A. *the Daughter of the aforeſaid* A. *and to* John *the Son of the aforeſaid* K. *and to* W. *Son of the aforeſaid* S. *Couſins and Heir of the aforeſaid* William, *&c.*

I And if Lands be given to *R.* and *I.* and to the Heirs of the Body of *R.* begotten, and *R.* hath Iſſue four Daughters, and he and one of his Daughters enter into Religion, and are profeſſed, and *I.* dieth; and afterwards one of the Daughters of *R.* dieth before they have any Poſſeſſion of the Lands, and the other two Daughters do ſurvive, and are deforced of the Land, they ſhall have a Formedon in ſuch Form:

Which T. *gave to* R. *and* I. *and to the Heirs of the Body of him the ſaid* R. *iſſuing, and which* (*b*) *after the Death of the aforeſaid* I. *and after that the aforeſaid* R. *and* Grace, *one of the Daughters of the aforeſaid* R. *took upon them the religious Habit, and in which Habit they are profeſſed, as it is ſaid; and alſo after the Death of* E. *another of the Daughters of the aforeſaid* R. *ought to deſcend to the aforeſaid* M. *and* A. *two other Daughters of the ſame* R. *&c.*

K And if the Reverſion of Tenant in Dower be granted to a Man in Tail, and after the Death of Tenant in Dower he is ſeiſed of the Land by Force of the Gift, and hath Iſſue and dieth, and the Iſſue entreth and hath a Daughter and dieth, and afterwards a Stranger entreth, and abateth in the Land, the Heir of the Iſſue in Tail ſhall have a Formedon in this Form: [214.]

Which I. *of* H. *holds in Dower of the Inheritance of* I. *of* S. *and which the ſame* I. *granted to* W. *of* S. *to hold to him and the Heirs of his Body iſſuing, and which after the Death of the aforeſaid* I. *and* W. *and of* R. *the Son and Heir of the ſame* W. *ought to deſcend to the aforeſaid* Iſabel *the Daughter and Heir of the aforeſaid* W.

A And if a Man leaſe Lands for Life, and afterwards grants the Reverſion in Tail, and then Tenant for Life dieth: Now if a Stranger abate in the Land, the Grantee in the Reverſion ſhall have ſuch Writ:

(*a*) Without ſaying (*Et* R.) becauſe he had nothing in the Tail: But if on the ſhewing it happens to appear, that *R.* was Tenant by the Curteſy, thereon ſhewing the Writ *Poſt mortem* R. & M. ſhall be well enough. 20 *Ed.* 3. *Brief* 377.

(*b*) *Note*; The Death of *R.* ought to be ſhewn, or elſe the Writ ſhall abate, *Commendablement.* 11 *H.* 6. 28.

Which I. *gave to* P. *for his Life, and which the ſame* I. *granted to the aforeſaid* F. *and the Heirs of his Body iſſuing, to have after the Death of him the ſaid* P. *and which after the Death of the aforeſaid* P. *ought to remain to the aforeſaid* F. *by the Form of the Gift and Grant aforeſaid*, &c. (*a*).

And if a Man leaſe Lands for Term of Life, and afterwards grants the Reverſion in Tail by Fine unto a Man and his Wife, and unto the Heirs which he ſhall beget on the Body of his Wife, and afterwards the Tenant for Life dieth, and the Huſband and Wife enter, and are ſeiſed by Force of the Tail, and die, and a Stranger abateth and entreth into the Land; the Heir ſhall have a Formedon, thus:

Which A. *gave to* B. *for the Life of him the ſaid* B. *by a Fine thereof in the Court of Lord* E. *ſome time King of* England, *before* C. *and his Companions then Juſtices*, &c. *by his Writ levied, granted to* D. *and* E. *his Wife, to have after the Death of the ſaid* B. *to them the ſaid* D. *and* E. *and the Heirs which the ſame* D. *ſhould beget of the Body of her the ſaid* E. *and which after the Death of the aforeſaid* B. D. *and* E. *ought to deſcend to the aforeſaid* F. *the Son and Heir* (*b*) *of the aforeſaid* D. *and* E. *of the Body of the ſaid* E. *by the aforeſaid* D. *begotten, by the Form of the Gift and Fine aforeſaid, as he ſaith*, &c. (*c*).

(*a*) It ſeems he may have a general Writ in this Caſe. 11 *H.* 6. 21.

(*b*) See the like Writ awarded good, 11 *Ed.* 3. *Brief* 474. 41 *Ed.* 3. *Brief* 459.

(*c*) *In what Manner Eſplees ſhall be alledged in a Formedon.*

In a Formedon in Remainder it is ſufficient to alledge the Eſplees in him who was ſeiſed by the Gift, without alledging them in the Donor; *quod vide* 9 *H.* 6. 53. 11 *Ed.* 3. *Formedon* 31. yet the Count is not the worſe, if they are alledged in the Donor, 8 *Ed.* 3. 59. *Raſt. Entr.* 369. 27 *Ed.* 3. 84. and the Reaſon in this Caſe and in Formedon in Deſcender, is, for that the Count ſhews a Seiſin in the Donor. 15 *Ed.* 4. 17. In a Formedon in Deſcender, if *A.* gives to *B.* for Life, Remainder to *C.* in Tail; *B.* dies, and *C.* enters and dies, and the Iſſue brings Formedon in Deſcender; and held, 1. In no Caſe in Formedon in Deſcender is it neceſſary to alledge Eſplees in the Donor; but where it is ſo, he is not prejudiced. 8 *Ed.* 3. 19. 10 *Ed.* 3. 5. 2. He may have in this Caſe a general Writ, ſuppoſing the Gift to be immediately to *C.* and then it is ſufficient to alledge Eſplees in *C.* without Doubt. 9 *H.* 6. 53. 44 *Ed.* 3. 18. 3. He may count on the ſpecial Matter, and then ought to alledge Eſplees in *B.* and alſo in the Donee, 11 *Ed.* 3. *Formedon* 32. 8 *Ed.* 3. 19. *Raſt. Entr.* 363. yet ſee a Formedon in Deſcender, where a Reverſion was granted in Tail, bound the Eſplees in ſuch ſpecial Writ in the Donor, 5 *Ed.* 3. 17. 4 *Ed.* 3. 45. and alſo in the Leſſee for Life, and in the Grantee in Tail. 4. A Formedon in Reverter ought to alledge Eſplees in the Donor, 9 *H.* 6. 53. and alſo in the Donee.

Note; In a *Scire facias* to execute a Remainder, the Plaintiff was driven to make mention of all thoſe on whom the Land deſcended in Tail, although they were not ſeiſed. 25 *Ed.* 3. 44. See 10 *Ed.* 2. *Deſcents.*

Another

Another Writ of Formedon in the Deſcender.

B THERE is another Writ of Formedon in the Deſcender, which is called a Writ of Formedon of Land, which he holdeth in Coparcenary, and that Writ lieth properly where Tenant in Tail dieth ſeiſed, and hath Iſſue many Daughters, and they enter, and make a Diviſion and Partition of the Land betwixt them, and one of the Coparceners after the Partition doth alien her Part, and dieth; her Heir ſhall have that Manner of Writ of Formedon, and that Writ lieth for Lands given in Frank-marriage, as well as for other Lands given in Tail.

And if Lands in (*a*) Gavelkind be intailed, and deſcend to many Brethren, as Heirs to their Father, and they make Partition betwixt them of the Lands, and afterwards one alieneth his Part, and dieth, his Heir ſhall have a Formedon of that which they held in Parts; and the Form of the Writ is ſuch:

The King, &c. *Command* A. *that*, &c. *he render to* B. *eighty Acres of Land with the Appurtenances in* D. *which* (*b*), *together with other eighty Acres of Land with the Appurtenances in the ſame Town*, L. *gave to* T. *in Frank-marriage with* I. *the Daughter of the aforeſaid* L. *and which after the Death of the aforeſaid* T. I. *and of* M. *the Daughter and one of the Heirs of them the ſaid* T. *and* I. *(who held them for her Purparty falling to her of the aforeſaid one hundred and ſixty Acres of Land, by Partition between her the ſaid* M. *and* R. *the Siſter of the ſame* M. *the Daughter and other Heir of the aforeſaid* T. *and* I. *thereof made) ought to deſcend to the aforeſaid Son and Heir of the ſaid* M. *&c.*

C And if two Coparceners be Tenants in Tail by Deſcent from their Father or Mother, and afterwards they make Partition, and one Coparcener hath Iſſue, and dieth, and the other Coparcener dieth without Iſſue, the Heir of that Coparcener who hath Iſſue ſhall have a Formedon in this Form:

And which after the Death of the aforeſaid T. *and* I. *and of* K. *the Daughter and one of the Heirs of them the ſaid* T. *and* I. *(who held the ſame for her Purparty falling to her of the aforeſaid one hundred and ſixty Acres of Land, by Partition between her the ſaid* K. *and* M. *the Siſter of the ſame* K. *the Daughter and other Heir of the aforeſaid* T. *and* I. *thereof made) and of the aforeſaid* M. *ought to deſcend to the aforeſaid* G. *the Son of the aforeſaid* M. *and Couſin and Heir of the aforeſaid* K. *&c.*

And it appeareth by the Regiſter, that a Man ſhall have a Writ of Formedon of Land which he held in Partition by the Name of the Moiety in ſpecial Caſes; as where two Coparceners are Daughters of Tenant in Tail, and they make Partition between them of the Land, and afterwards one Siſter dieth without Iſſue, and the other Siſter alieneth the Land, and hath Iſſue and dieth; the Iſſue of the Coparcener who had Iſſue, ſhall have a Formedon of all the Land in Tail in this Form:

(*a*) He ought to ſhew in his Count, that the Tenements are partible, but not in the Writ. 11 *H.* 6. 44.

(*b*) *Note*; The Form of the Writ, when all the Lands in Fee-ſimple are allotted to the elder Son, and all the intailed Lands to the younger, who aliens and dies, without ſaying *una cum*, *&c.* 20 *H.* 6. 13.

The King to the Sheriff, &c. *Command* F. *that,* &c. *he render to* H. *ten Meſſuages and twenty Acres of Land with the Appurtenances,* &c. *which* I. *gave to* A. *and the Heirs of his Body iſſuing, and which after the Death of the aforeſaid* A. *and of* M. *the Daughter and one of the Heirs of the ſame* A. *who held a Moiety of the aforeſaid Meſſuages and Lands for her Purparty, and of* B. *the Daughter and the other Heir of the aforeſaid* A. *who held the other Moiety of the ſame Meſſuages and Lands for her Purparty, by Partition thereof between them made (which ſaid* B. *as Siſter and Heir of the ſaid* M. *held the Moiety aforeſaid falling to the aforeſaid* M. *after the Death of the ſaid* M.) *ought to deſcend to the aforeſaid* H. *the Son and Heir of the aforeſaid* B. *&c.*

And the Writ is good, becauſe by the Death of one Siſter without Iſſue the Partition is made void, and the other ſhall have the whole Land as Heir in Tail.

And if a Man give Lands in Tail unto *I.* his Daughter, and to the Heirs of D
her Body, and *I.* hath Iſſue two Daughters, and dieth, and they enter and make
Partition between them, and afterwards one of the Daughters hath Iſſue two
[215.] Daughters, and one of the two Daughters hath Iſſue four Daughters, and die,
and afterwards the Aunt who was one of the Daughters of the Donee dieth
without Iſſue, *&c.* and a Stranger abateth; the four Daughters, and the Iſſue
of the other Siſter, ſhall have a Formedon in ſuch Form:

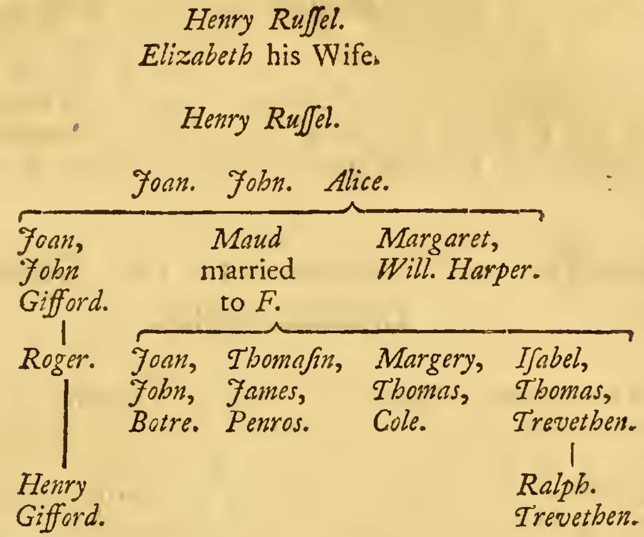
That, &c. *he render,* &c. *three Meſſuages, one hundred Acres of Land, and twenty Acres of Meadow, and one hundred Shillings Rent, with the Appurtenances in* N. *which together with the Manor of* B. *with the Appurtenances,* A. *gave to* I. *his Son and to the Heirs of his Body iſſuing, and which after the Death of the aforeſaid* I. *and of* C. *the Daughter and one of the Heirs of the ſame* I. *(who held the ſame for her Purparty falling to her after the Death of the aforeſaid* I. *of the ſaid Manor, Meſſuages, Land, Meadow and Rent, by Partition between her the ſaid* C. *and* D. *the Daughter and the other Heir of the ſame* I. *thereof made) and of the aforeſaid* D. *and of* A. *and* E. *the Daughters of the ſaid* D. *ought to deſcend to the aforeſaid* Margaret, Margery, Katherine *and* Conſtantine, *the Daughters of the aforeſaid* A. *(and* T. *Son of the aforeſaid* E.) *and Couſins and Heirs of the aforeſaid* C. *&c.*

And if the Moiety of any Land be given to the Huſband and Wife, and A
unto the Heirs of their two Bodies begotten, and they have Iſſue four Daughters, and die, and the Siſters enter and make Partition betwixt them, and afterwards the two Siſters die without Iſſue, and the third Siſter alieneth, and dieth without Iſſue; the fourth Siſter ſhall have a Formedon in this Form:

And which after the Death of the aforeſaid Roger *and* Agnes, *and of* Alice B
the younger Daughter and one of the Heirs of them the ſaid Roger *and* Agnes, *(which ſame* Alice *the younger held the ſaid fourth Part for her Purparty falling to her of the aforeſaid Moiety, by Partition between her and* Iſabel *and* Alice *the elder and the aforeſaid* Maud, *the Daughters and three other Heirs of the aforeſaid* Roger *and* Agnes *his Wife, thereof made) and of the aforeſaid* Iſabel *Daughter of* Roger, *and of* Alice *the elder, ought to deſcend to the aforeſaid* Maud *the Siſter and Heir of the ſame* Alice *the younger,* &c.

And to make a full Declaration of the Caſe of Formedon in the Deſcender, upon which the Writ is founded, it is neceſſary to have the Pedigree made in the Writ, which you ſhall ſee here following:

Henry



Henry Ruſſel gave Land to *Henry Ruſſel* and to *Elizabeth* his Wife, to *Henry* their Son, and to the Heirs of the ſaid *Henry* the Son of his Body lawfully begotten, and died, and after *Henry Ruſſel* the Father and Mother died, and *Henry Ruſſel* the Son was ſeiſed by Force of the Tail, and had Iſſue *Joan*, *John* and *Alice*, and *Alice* had Iſſue *Joan*, *Maud* and *Margaret*, and *Joan* was married to *John Gifford*, and had Iſſue *Roger Gifford*, who had Iſſue *Henry Gifford*; and *Maud* was married to *F.* and had Iſſue *Joan*, married to *John Botreux*, *Thomaſin* married to *James Penros*, *Margaret* married to *Thomas Cole*, and *Iſabel* married to *Trevethen*; and *Iſabel* had Iſſue *Ralph Trevethen*; and *Margaret* was married to *William Harper*: And *Henry Ruſſel* the Son died, and *John* his Brother entred and was ſeiſed by Force of the Tail, and died, and a Stranger abated, and all the Heirs in Tail are dead, but *Margaret Harper* the Wife of *William Harper*, *Henry Gifford*, *Thomaſin* married to *James Penros*, *Joan Botreux* married to *John Botreux*, and *Margery Cole* married to *Thomas Cole*, *Joan*, *Margaret*, and *Ralph* Son of the ſaid *Iſabel*; now theſe Coparceners ſhall join in the Formedon, and the Writ ſhall be ſuch:

The King to the Sheriff, &c. Command Reginald Rees *that, &c. he render to* William Harper *and* Margaret *his Wife*, Henry Gifford, James Penros *and* Thomaſin *his Wife*, John Botreux *and* Joan *his Wife*, Thomas Cole *and* Margery *his Wife, and* Ralph Trevethen, *the Manor of* R. *with the Appurtenances, which* [216.] Henry Ruſſel *gave to* Henry *of* Ruſſel *and* E. *his Wife, and to* Henry *the Son of them the ſaid* Henry *of* Ruſſel *and* Eliz. *his Wife, and to the Heirs of the Body of him the ſaid* Henry *the Son of* Henry *iſſuing, and which after the Death of the aforeſaid* Henry *of* Ruſſel *and* Eliz. *his Wife, and of* Henry *the Son of* Henry, *and of* John *the Son and Heir of the ſame* Henry *the Son of* Henry, *and of* John *the Brother and Heir of the ſame* John *the Son of* Henry, *and of* Alice *the Siſter of the ſame* John *the Brother of* John, *and of* Joan *one of, and of* Maud *the other of the Daughters of the ſame* Alice, *and of* Roger *the Son of the aforeſaid* Joan *the Daughter*

Daughter of Alice, *and of* Joan *one of the Daughters of the aforeſaid* Maud, *ought to deſcend to the aforeſaid* Margaret *the Wife of* William, *the third of the Daughters of the aforeſaid* Alice, *to* Henry Gifford *Son of the aforeſaid* Roger, *and to* Thomaſin *the Wife of the ſaid* James, *and to* Joan *the Wife of the ſaid* John, *and to* Margery *the Wife of the ſaid* Thomas, *the other Daughters of the ſaid* Maud, *and to* Ralph *the Son of the ſaid* Iſabel *Daughter of* Maud, *and Couſin and Heir of the aforeſaid* John *the Brother of* John, *&c.*

Another Writ of Formedon in the Deſcender, called Inſimul tenuit.

THERE is another Manner of Writ of Formedon in the Deſcender, A which is called *Formedon qui inſimul tenuit*; and that Writ lieth by one Coparcener, or by one Heir in Gavelkind of Lands intailed, where they hold the Lands intailed in Coparcenary without any Partition made between them of the ſame, and afterwards one Coparcener doth alien her Part unto a Stranger in Fee, and dieth without Iſſue, or hath Iſſue, and dieth; or if ſhe dieth ſeiſed, and hath Iſſue, and a Stranger doth ouſt the Iſſue, or the other Coparcener doth put out the Iſſue, the Iſſue, or he who is Heir to the Tail of thoſe Lands, ſhall have that Writ of Formedon againſt the Stranger, or the other Coparcener, who deforced her of the Land.

The King to the Sheriff, &c. *Command the Abbot of* Weſtminſter, *&c. that*, &c. *he render to* B. *and* I. *his Wife*, *two Parts of thirty Shillings Rent of one thouſand white Loaves of Bread of the Price of twenty Shillings*, *and of five Flaggons of Ale of the Price of ten Pence*, *with the Appurtenances in* B. *which together with a third Part* (*a*) *of the ſame Shillings Rent*, *Bread and Ale*, *with the Appurtenances in the ſame Town*, A. *gave to* G. *and* B. *his Wife*, *and to the Heirs of the Bodies of them the ſaid* G. *and* B. *iſſuing*, *and which after the Death of the aforeſaid* G. *and* B. *and of* R. *the Son and Heir of them the ſaid* G *and* B. *and of* T. *the Daughter and Heir of the ſame* R. *and of* W. *the Son and Heir of the ſame* T. *and of* M. *the Son and one of the Heirs of the ſame* W. *(who held thoſe two Parts and the ſaid Part together with* K. *the Daughter and the other of the Heirs of the aforeſaid* W.) *and of* D. *Daughter and Heir of the ſame* M. *and of the aforeſaid* K. *Aunt of the aforeſaid* C. *and of* F. *Daughter of the ſame* K. *ought to deſcend to the aforeſaid* I. *the Daughter of the aforeſaid* F. *and Couſin and Heir of the aforeſaid* D. *by the Form of the Gift aforeſaid*, &c.

And by that Writ it ſeems, that *I.* is ſeiſed of the third Part of thoſe Rents; B and bringeth this Writ of two Parts of that Rent.

And there is another Writ of Formedon and *Inſimul tenuit*, where he ſhall make his Demand by the Name of the Moiety, and that is where one Coparcener is deforced of her Part, and the other Coparcener is in Poſſeſſion of her Part; and the Writ is ſuch:

(*a*) *Note*; Theſe Words are neceſſary. 5 *H.* 5. 8.

Command the Abbot of Weſtminſter *that*, &c. *he render to* B. *and* I. *his Wife*, *the Moiety of thirty Shillings Rent*, *and of the Rent of a Thouſand white Loaves of Bread of the Price of ten Shillings*, *and of five Flaggons of Ale of the Price of ten Pence*, &c. *with the Appurtenances in the City of* Weſtminſter, *which together with another Moiety of the ſame thirty Shillings Rent*, *and of the Rent of Bread and Ale*, *with the Appurtenances in the ſame City*, A. *gave to* G. *and* B. *his Wife*, *and to the Heirs of the Bodies of them the ſaid* G. *and* B. *iſſuing*, *and which after the Death of the ſaid* G. *and* B. *and of* F. *the Son and Heir of the ſame* G. *and* B. *and of* T. *the Son and Heir of the ſame* F. *and of* W. *the Son and Heir of the ſame* T. *and of* R. *the Son and one of the Heirs of the ſame* W. *(who held the ſame, and the aforeſaid other Moiety, together with* M. *the Daughter and the other Heir of the aforeſaid* W.*) and of* E. *the Son of the ſame* R. *ought to deſcend to the aforeſaid* I. *the Daughter of the aforeſaid* E. *and Couſin and Heir of the aforeſaid* R. *&c.*

C And it appeareth by that Writ, that one Coparcener ſhall have the Writ of Formedon in the *Inſimul tenuit* againſt a Stranger upon the Poſſeſſion of his Anceſtor, without naming the other Coparcener who hath her Part in Poſſeſſion.

And if a Man do bring a Formedon in the Deſcender upon the Seiſin of his Brother, and as Heir to his Brother; he ſhall not mention in the Writ, that his Brother is dead without Iſſue: But if a Man bring a Formedon in the Deſcender as Couſin and Heir to him, he ought to mention in the Writ how he is Couſin an Heir to him, and he ought to make himſelf Heir to him who was laſt ſeiſed, and that by the ſame Writ.

D And a Man ſhall have a Formedon in the Deſcender upon a Gift in Tail made after the Statute *de Donis*, if the Alienation be made after the Statute, and not before.

E And if Lands in Tail deſcend to two Coparceners, and one entreth into the 40 Ed. 3.
whole, and the other hath Iſſue and dieth, and ſhe which entreth into the 4 Ed. 3. 9
whole dieth without Iſſue, the Iſſue of the other Coparcener ſhall have ſeveral contr. 43
(*a*) Writs of Formedon, one of Seiſin of the Grandfather, and in that Writ he 16, 17.
ſhall not ſay *Inſimul tenuit*, *&c.* becauſe her Mother was never ſeiſed; but of 19 H. 6.
the other Moiety of the Land of the Seiſin of her Aunt, the Writ ſhall ſay,
F *Qui inſimul tenuit* with her Mother; for that Seiſin was a Seiſin to her Mother,
if he would, *&c.* And if one Coparcener after the Death of the Anceſtor
enter into the whole, and alieneth in Fee, and dieth without Iſſue, the other
Coparcener ſhall demand the Moiety as Heir unto her Father, and the other
Moiety as Heir unto her Siſter.

(*a*) See accordingly adjudged, 40 *Ed.* 3. 8. where the Caſe is, Donee in Tail had Iſſue two Daughters *A.* and *B.* *A.* enters into the Whole, and aliens in Fee, and dies without Iſſue, *B.* has Iſſue *C.* and dies, *C.* brings a Formedon, *Quæ poſt Mort. A.* Donee and *B. filiæ* of the Donee *deſcend' debet* to the Demandant (of one Moiety) and for the other Moiety, *Quæ poſt Mort.* of the Donee, and *A. filiæ & unius hæredis* of the Donee for the one Moiety, and for the other to *B.* the Heir of *A. qui inſimul, &c.* adjudged, 43 *Ed.* 3. 16, 17. Yet ſee *per Cur.* 19 *H.* 6. 45. if the one Parcener enters into the Whole, and after dies, and the other has Iſſue and dies, the Iſſue ſhall have a Formedon againſt the Tenant in Poſſeſſion of her Mother, ſuppoſing *quod inſimul tenuit* with the Aunt, for the Poſſeſſion of one is the Poſſeſſion of the other.

[217.] And if the Heirs in Tail of Gavel-kind bring a Formedon in the Deſcender, A the Writ ſhall be of common Form, as the Writ of Formedon brought by Siſters, and in the Count he ſhall ſhew the Cuſtom.

A Formedon ſhall be brought of Gorſes, but not of an Advowſon. B

And if Tenant in Tail be indebted to the King in the Exchequer, and dieth; and his Heir entreth into the Lands, and is diſtrained in the entailed Lands for the King's Debt: Now if the Father's Executors have Aſſets or Goods, or if the Father hath Lands in Fee-ſimple in the Hands of others, which he hath aliened; the Heir in Tail ſhall have a ſpecial Writ unto the 4 Eliz. 240. b. accordant, but in 249 per Brown held contra. Treaſurer and Barons of the Exchequer, rehearſing the whole Matter; commanding them that they do enquire thereof; and if it be true, that they do C ſurceaſe to charge him upon the entailed Lands; and the Writ is ſuch:

The King to his Treaſurer and Barons of the Exchequer, greeting: R. *the Son of* I. *of* W. *hath ſhewed unto us, That although he doth not hold Lands or Tenements which were his the aforeſaid* I.'s, *ſaving twelve Meſſuages and two Ploughlands in* I. *with the Appurtenances, which the aforeſaid* I. *and* C. *his Wife, Mother of the aforeſaid* R. *whoſe Heir he is, held to themſelves and to the Heirs of the Bodies of them the ſaid* I. *and* C. *iſſuing, of the Gift and Grant of* H. *of* C. *by a Fine thereof levied in the Court of Lord* E. *&c. our Grandfather, and which after the Death of the aforeſaid* I. *and* C. *came to the Hands of him the ſaid* R. *by Virtue of the Fine aforeſaid; you nevertheleſs diſtrain him the ſaid* R. *in the Lands and Tenements aforeſaid, which are ſo holden in Fee-tail, for one hundred Pounds to us for Arrearages extended by you of the Manor of* Orford, *of the aforeſaid* I. *after we took upon us the Government of the Realm; and the Tenements aforeſaid, ſo given and granted to the ſaid* I. *and* C. *in Fee-tail, are committed to be rendered, you omitting as well the Inheritance of the aforeſaid* I. *as the Tenants of the Lands and Tenements which were of him the ſaid* I. *in Fee-ſimple, which of Right ought to be charged with his Debt, and have ſufficient whereof thoſe Debts may be levied, and diſquiet and unjuſtly agrieve him many Ways upon that Occaſion,* &c. *whereupon he hath beſought us to provide for him a Remedy: We being unwilling that the aforeſaid* R. *ſhould be injured in this Matter, command you, that if it ſhall appear to you in a legal Manner, that the Meſſuages and Lands aforeſaid were given and granted to the aforeſaid* I. *and* C. *in Manner aforeſaid, and that he the ſaid* R. *doth not hold any other Lands and Tenements which were of the aforeſaid* I. *ſaving the ſame Meſſuages and Land, which came to his Hands by Virtue of the Fine, and that the ſaid Heir or the Tenants aforeſaid, have ſufficient whereof the ſaid Debts may be levied, as is before ſaid, then cauſe the ſaid* R. *to be diſcharged and acquitted of the aforeſaid one hundred Pounds towards us, charging thoſe who, thereupon, of Right ought to be charged, as ſhall be juſt. Witneſs,* &c.

And by that Writ it appeareth, that if the Heir or the other Tertenants were not ſufficient for to pay the Debt, the Lands which the Heir hath in 4 Eliz. 240. Tail ſhall be charged; for ſome ſay that the King is not bound by the Statute of *Donis, &c.* but that he is in the ſame Caſe he was before; *Quære* thereof (*a*).

(*a*) *Note*; Stat. 33 *H.* 8. *c.* 39. makes the Heir in Tail liable.

And if a Man do alien his Lands in Fee, and afterwards become indebted to the King, *&c.* If the Alienee be diſtrained for that Debt, he ſhall have a ſpecial Writ to the Treaſurer and Barons of the Exchequer, rehearſing the whole Matter, commanding them for to ſurceaſe, *&c.*

And ſo if a Man be diſtrained for a Debt or Duty due to the King, as Executor, or as Pledge for him who is the King's Debtor, he ſhall have a ſpecial Writ unto the Treaſurer and Barons of the Exchequer to inquire thereof, and to do Right (*a*).

Writ of Formedon in the Remainder.

D THE Writ of Formedon in the Remainder lieth, where a Man giveth Lands to one in (*b*) Tail, the Remainder unto another in Tail, and afterwards the firſt Tenant in Tail dieth without Iſſue of his Body, and a Stranger doth abate and deforce him in the Remainder; he in the Remainder, or his Heir, ſhall have that Writ of Formedon in Remainder. And ſo if the firſt Tenant in Tail alieneth in Fee, and dieth without Iſſue of his Body begotten, he in the Remainder in Fee ſhall have a Writ of Formedon in the Remainder to recover his Eſtate, *&c.*

E And if a Man giveth Lands for Term of Life, the Remainder to another, and the Heirs of his Body begotten, and the Tenant for Life dieth, and a Stranger abateth and deforceth him in the Remainder, that he cannot enter, he in the Remainder, or his Heir, ſhall have a Formedon in Remainder to recover his Eſtate, *&c.*

So if a Man make a Gift in Tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for Life, and dieth without Iſſue, he in the Remainder, or his Heir, ſhall have a Formedon in the Remainder to recover that Land.

And it ſeemeth the ſame Law ſhall be, if a Man leaſe Lands for Term of Life, the Remainder to another in Fee, and the Tenant for Life doth alien in Fee, or in Tail, or for Life, and dieth, and a Stranger abateth and deforceth him who ought for to have the Remainder; then he in the Remainder, or his Heir, ſhall have a Formedon in the Remainder to recover that Land; *Quod vide* 24 *Ed.* 3.

And that appeareth to be but reaſonable, becauſe he hath Right for to have the Land; and then it is but Reaſon that he have an Action for to recover the ſame: And that appeareth by the Statute of *Weſt.* 2. *cap.* 24. which willeth, *Quod quotieſcunque de cætero evenerit in Cancellar' quod in uno caſu reperit' breve, in conſimili caſu cadente ſub eodem jure, & ſimili remedio indigente; con-* [218.]

(*a*) *Note*; Regularly where Proceſs is by Summons, Attachment, and *Capias* (Diſtreſs) after *Nihil* returned on the Summons, a *Capias* ſhall iſſue. 21 *H.* 6. 56.

Note alſo; If the original Formedon be returned *Tarde*, the Summons *ſicut alias* is inſtead of a new Original, and there ſhall be nine Returns between the Teſte and Return, and it ſhall be a *Si fecerit te Securum. Dyer* 252.

(*b*) And ſo it is, if the Iſſue of the Iſſue in Tail dies without Iſſue, for then on the whole Matter, the Tenant in Tail is dead without Iſſue; by *Dyer* 4 *Eliz.* 233.

cordent Clerici in Canc' in brevi faciend'. For which it ſeemeth that ſuch Writs are granted.

A And alſo upon the Statute of *Donis conditionalibus*, there is not the Writ of Formedon given by expreſs Words, but a Writ of Formedon in the Deſcender; but yet it was never doubted, but that if a Man make a Leaſe for Life, the Remainder in Tail to another, that he in the Remainder in Tail, or his Heir ſhould have a Writ of Formedon in the Remainder, after the Death of the Tenant for Life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it ſeems: For no Formedon in the Remainder is given by any Statute; and therefore it ſeems it ſhall be taken by Equity of the Statute; yet ſome have doubted thereof; and the Form of the Writ for him who claimeth the Remainder in Fee-ſimple, after the Eſtate-tail determined, is ſuch:

B *The King to the Sheriff*, &c. *Command* A. *that*, &c. *he render to* B. *one Meſſuage, twenty Acres of Land*, &c. *which* C. *gave to* D. *and to the Heirs of his Body iſſuing, ſo that if the ſaid* D. *ſhould die without Heirs of his Body iſſuing, the aforeſaid Meſſuage and twenty Acres of Land with the Appurtenances, ſhould remain to the aforeſaid* B. *and his Heirs, and which after the Death of the aforeſaid* D. *ought to remain to the aforeſaid* B. *by the Form of the Gift aforeſaid, becauſe the aforeſaid* D. *died without Heir of his Body iſſuing, as it is ſaid, and unleſs*, &c. *then ſummon*, &c.

And for the Heir of him upon whom the Remainder was entailed, thus:

(*a*) *And which after the Death of the aforeſaid* D. *and* B. *ought to remain to the aforeſaid* I. *Son and Heir of the aforeſaid* B. *by the Form of*, &c. *becauſe the aforeſaid* D. *died without Heir of his Body iſſuing, as it is ſaid, and unleſs*, &c. (*b*).

C And if a Leaſe be made for Term of Life, the Remainder unto another, and unto the Heirs of his Body begotten; now after the Death of Tenant for Life, if he in the Remainder be deforced of the Land by Abatement of a Stranger, then he ſhall have ſuch Writ:

Which A. *gave to* B. *for the Life of him the ſaid* B. *ſo that after the Death of him the ſaid* B. *the ſaid Meſſuages, and twenty Acres of Land with the Appurtenances, ſhould remain to* D. *and to the Heirs of his Body iſſuing, and which after the Death of the aforeſaid* B. *and* D. *ought to remain to the aforeſaid* W. *the Son* (*c*) *and Heir of the ſame* D. *by the Form of*, &c.

2 & 3 Ma. Dyer 125. 6 Ed. 3. 5.

D And if a Reverſion be granted to another in Tail, and the Tenant for Life dieth ſeiſed, and the Stranger abates and enters the Land; the Grantee in Reverſion ſhall have a Formedon in ſuch Form:

Which G. *gave to* T. *for the Life of him the ſaid* T. *and which the ſame* G. *afterwards granted to the aforeſaid* P. *and* M. *ſome time her Huſband, to have after the Death of the aforeſaid* T. *to the aforeſaid* P. *and* M. *and to the Heirs*

(*a*) See 5 *Ed* 3. 25. 6 *Ed.* 3. 9. 7 *Ed.* 3. 4. The Writ is good without ſaying *per Mortem* B. for that is ſuppoſed by ſaying *Filius & Hæres.* See 11 *H.* 6. 43.

(*b*) See 31 *Ed.* 3. *Brief* 328. In Deſcender in a *Scire facias.*

(*c*) *Note*; If he demands as Couſin and Heir to *D.* he may ſay *ut conſanguineo & hæredi prædict'* D. or he may ſay, *remanere debet dicto Filio & Hæredi* G. *filii & hæredis dicti* D. *&c.* Adjudged *int'* *Freke* and *Binford.*

Note; The *poſt Mortem* is ſufficient for the Eſtate for Life, without ſhewing the Death with the *Eo quod*, *&c.* *Dyer* 349.

of the Body of them the ſaid P. *and* M. *iſſuing, and which after the Death of the aforeſaid* T. *ought to remain to the aforeſaid* M. *by the Form of the Grant aforeſaid*, &c.

E And if *A.* give a Manor except thirteen Shillings and four Pence Rent to *R.* and *I.* his Wife, and to the Heirs of their two Bodies begotten, and the Remainder to one *I.* in Fee, and afterwards *R.* aliens one Houſe and one Acre of Land to one Man, and three Acres to another, and two Acres of Land to a third Perſon, and the Reſidue of the Manor unto one *B.* in Fee, except the Rent of thirteen Shillings and four Pence, and afterwards the Huſband and Wife die without Iſſue betwixt them; he in the Remainder ſhall have ſuch Writ againſt the Alienee.

Command D. *that*, &c. *he render to* I. *the Manor of* F. *with the Appurtenances, except one Meſſuage, ſix Acres of Land, and thirteen Shillings and four Pence Rent in the ſame Manor. And Command* G. *that*, &c. *he render to the ſame* I. *one Meſſuage and twenty Acres of Land with the Appurtenances in* F. *And command* T. *that*, &c. *he render to the ſame* I. *three Acres of Land*, &c. *And command* L. *that*, &c. *he render to the ſame* I. *two Acres of Land with the Appurtenances*, &c. *which* A. *gave to* R. *and* I. *his Wife, and to the Heirs of the Bodies of them the ſaid* R. *and* I. *iſſuing, ſo that if they the ſaid* R. *and* I. *ſhould die without Heirs of their Bodies*, &c. (*a*) *the aforeſaid Meſſuages, ſix Acres of Land and Manor, except the Meſſuage, ſix Acres of Land and Rent aforeſaid, ſhould remain to the aforeſaid* I. *and his Heirs*, &c.

And by that it appeareth, that a Man ſhall have a Writ of Formedon in Remainder againſt ſeveral Tenants by divers *Præcipes* in one Writ.

And if a Man leaſe Lands for Life, the Remainder in Tail, *&c.* the Remainder over in Fee to another, and the Tenant for Life dieth, and the Tenant in Tail alieneth in Fee, and afterwards the Alienee doth alien two Parts of the Land to one Tenant, and the third Part of the Land to another Tenant, and then the Tenant for Life dieth, and then the Tenant in Tail dieth without Iſſue: He in the Remainder in Fee ſhall have a Formedon in the Remainder, in ſuch Form:

Command A. *that*, &c. *he render to* B. *two Parts of one Meſſuage with the Appurtenances in* N. *Command* E. *that*, &c. *he render to the ſame* B. *the third Part of one Meſſuage with the Appurtenances in the ſame Town, which* D. *gave to* C. *for the Life of him the ſaid* C. *ſo that after the Death of him the ſaid* C. *the aforeſaid two Parts and third Part ſhould remain to the aforeſaid* F. *and to the Heirs of his Body iſſuing, and if the ſaid* F. *ſhould die without Heirs of his Body iſſuing, the aforeſaid two Parts and third Part ſhould remain to the aforeſaid* B. *and his Heirs, and which after the Death of the aforeſaid* C. *and* F. *ought* (*b*)

(*a*) *Nota bene*; A joint Concluſion to ſeveral *Præcipes*, becauſe the Title is in one. 8 *R.* 2 *Brief* 929.

(*b*) But if the Remainder had been in Tail to the Heirs of the Body of *F.* and *C.* had died Living *F. A.* need not make Mention thereof. 38 *Ed.* 3. 26. And by *Paſton*, 3 *H.* 6. 2. if Land be given to *A.* for Life, Remainder to *B.* in Tail, Remainder to *C.* in Fee, and *B.* dies without Iſſue living *A.* and afterwards *A.* dies, *C.* ſhall have a Writ, ſuppoſing the Remainder tailed, or come to him preſently on the Death of *A.* if he will. And *Note*; In this Writ no Mention is of the Death of *C.* (who had but an Eſtate for Life) in the *Eo quod. Dyer* 349. A Gift was to *A.* in Tail, the Remainder to *B.* and *C.* in Tail, the Iſſue of *B.* bring a Formedon in Remainder, *Et quæ poſt Mort. A. & B. & C. præfato petenti ut filio & hæredi* B. *remanere Debet, &c. Eo quod prædict'* A. *obiit ſine, &c.* and held good without ſhewing the Death of *C.* in the *Eo quod.*

to remain to the aforeſaid B. *by the Form of the Gift aforeſaid, becauſe the aforeſaid* F. *died without Heir of his Body, as it is ſaid, and unleſs,* &c.

And by that appeareth how that he ſhall have one Writ by ſeveral *Præcipes* againſt ſeveral Tenants.

F If a Man leaſe to one twenty Acres of Lands for Life, and dieth, and the Reverſion deſcendeth to his Brother, and he dieth, and the Reverſion deſcendeth [219.] to his two Siſters, and they do make Partition of the Lands, and ten Acres are aſſigned to one Siſter to have to her and her Heirs, and the other ten Acres are allotted to the other Siſter and her Heirs; and one of the Coparceners grants the Reverſion of her Part and ten Acres to a Man and his Wife, and the Heirs of their two Bodies begotten, and afterwards the Tenant for Life dieth, and a Stranger doth enter and abate in the Land; the Huſband and the Wife who are in the Remainder, ſhall have a Writ of Formedon in the Remainder in this Form:

Command R. *of* N. *that,* &c. *he render to* K. *and* A. *his Wife, ten Acres of Land with the Appurtenances in* M. *which together with other ten Acres of Land with the Appurtenances in the ſame Town,* R. *of* S. *gave to* W. *for his whole Life, and which* M. *of* B. *Siſter and one of the Heirs of* N. *of* S. *Brother and Heir of the aforeſaid* R. *of* S. *(to which ſaid* M. *the Reverſion of the aforeſaid ten Acres of Land, was aſſigned for her Purparty falling to her of the aforeſaid twenty Acres of Land, by Partition between her and* Lucy *the Siſter, and the other Heir of the aforeſaid* N. *of* S. *thereof made, after the Death of the ſaid* W.) *granted to the aforeſaid* K. *and* A. *and to the Heirs of the Bodies of them the ſaid* K. *and* A. *iſſuing, to have after the Death of the ſaid* W. *and which after the Death of the ſame* W. *ought to remain to the ſaid* K. *and* A. *by the Form of the Grant aforeſaid, as they ſay, and unleſs they will do it,* &c. *and the ſaid,* &c.

A And if he who hath the Remainder, or his Heir, be once ſeiſed of the Lands by Force of the Remainder; then he ſhall never have a Formedon in (*a*) Remainder for that Land, but a Formedon in Deſcender, becauſe the Remainder is once executed. And no Tenant ſhall have a Formedon in Deſcender, nor in Remainder, where he is once in Poſſeſſion by Force of the Entail, or by Force of the Remainder; for after that, he hath Poſſeſſion of the Land by Force of the Tail, or by Force of the Remainder; if he be put out, he ſhall have an Aſſiſe of *Novel Diſſeiſin*, or the Writ of *Quibus*, in the Nature of an Aſſiſe, *&c.*

B (*b*) If a Remainder be given to two or three Heirs, and one dieth, and the other ſurviveth and afterwards dieth, his Heir ſhall have a Formedon in the Remainder, as Heir to him, without mentioning in the Writ that he ſurvived the other Joint-tenant, *&c.*

Plow. 52. a. C And in a Formedon in the Remainder, he ought for to ſhew the Deed thereof, if the Demandant do require *Oyer* (*c*) of the Deed, but in the Count he

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(*a*) In every Writ, if he makes Mention of a Remainder, he ought to ſuppoſe the Donee dead without Iſſue of his Body. 39 *Ed.* 3. 27.

(*b*) But he ought to make the Remainder tailed, or come to both of them by his Writ, and ought to ſhew the Survivor in his Count. 18 *Ed.* 3. 28. 38 *Ed.* 3. 26.

(*c*) And ſo, though it be after View, and Aid of the King granted. 18 *Ed.* 3. 34. But *Note*; The Tenant ſhall have no Anſwer as to the Deed;

he ſhall not ſpeak of any Deed; but the Tenant ought for to demand *Oyer* thereof, and then the Demandant ſhall ſhew the ſame, and in the Count ſhall not mention the Deed.

D And if the Remainder be once executed in the Writ of Formedon in the Deſcender, he ſhall never mention that Remainder, but the general Writ of Formedon ſhall ſerve in that Caſe, as appeareth by the Rule in the Regiſter (*a*).

Writ of Formedon in Reverter.

E THE Writ of Formedon in the Reverter lieth where one giveth Lands to a Man in Tail, or in Frank-marriage with his Daughter, and afterwards the Donee, or his Heirs, dieth without Iſſue of his Body; then the Donor or his Heirs may bring a Writ of Formedon in the Reverter againſt him who is Tenant of the Lands ſo given.

Ant. 196. B.

Ant. 218. D.

And ſo if one Man giveth Lands unto another in Tail, and the Donor granteth the Reverſion in Fee unto another, and then the Donee in Tail dieth without Heir of his Body, the Grantee of the Reverſion ſhall have a Writ of Formedon in the Reverter to recover that Land: But if he grant the Reverſion unto another in Tail, and then the Donee dieth without Heir of his Body, then that Grantee of the Reverſion ſhall have a ſpecial Writ, as appeareth before, amongſt the Writs of Formedon in the Remainder; and for the Heir of the Donor the Form of the Writ is ſuch:

See before 218. D.
2 Ed. 3.
Ma Dyer 125.
6 Ed. 3. 5.

Command A. *that*, &c. *he render to* B. *one Meſſuage and twenty Acres of Land with the Appurtenances in* G. *which* C. *the Father of the aforeſaid* B. *whoſe Heir he is, gave to* I. *and* E. *his Wife, and to the Heirs of their Bodies iſſuing, and which after the Death of the aforeſaid* I. *and* E. *ought to revert to the aforeſaid* B. *by the Form of the Gift aforeſaid, becauſe the ſaid* I. *and* E. *died without Heir of their Bodies iſſuing, as he ſaith, and unleſs*, &c.

Vide 4 Eliz. Dyer 216. A.
22 H. 6. 36.

F And if Lands be given in Tail, the Remainder to another in Tail, and afterwards the firſt Tenant in Tail dieth without Iſſue, and the ſecond Tenant in Tail in the Remainder doth enter into Religion, and is profeſſed; the Donor or his Heirs ſhall have ſuch a Writ of Formedon in the Reverter.

Which C. *the Father of* D. *whoſe Heir he is, gave to* F. *and to the Heirs of his Body iſſuing, ſo that if the ſame* F. *ſhould die without Heirs of his Body, the aforeſaid Meſſuages*, &c. *ſhould remain to* H. *and to the Heirs of his Body iſſuing, and which after the Death of the ſaid* F. *and after that the aforeſaid* H. *took upon him the religious Habit, ought to revert to the ſaid* D. *by the Form of the Gift aforeſaid, becauſe the ſaid* F. *died without Heir of his Body iſſuing*, &c. *and unleſs*, &c.

Deed; and therefore ſhall not ſay *Ne Dona pas by the Deed*, but generally *Ne Dona pas*, as the Writ ſuppoſes; for the Deed is only Evidence to make the Demandant reſponſible, 10 *Ed.* 3. 22. 1 *Ed.* 3. 49, *&c.* and therefore the Tenant may plead *Non-Tenure* after the Deed delivered. See 2 *Ed.* 3. 57. A Variance between the Writ and the Deed ſhall not abate it. 14 *H.* 6. 1. And *Note*; If he demand by Reaſon of a Uſe limited on the Feoffment, he need not ſhew the Deed. *Dyer* 277.

(*a*) And *Note*; Where a Grant is by Fine of Lands in Tail, yet the Iſſue ſhall have a *Scire facias*, although the Father was (never) ſeiſed. 15 *Ed.* 3 *Barr.* 255.

And if *C.* give Lands in Tail to *E.* and to *F.* his Wife, and unto the Heirs of their two Bodies begotten, and the ſaid *C.* hath Iſſue *G.* and *B.* and dieth, and afterwards *G.* dieth, and *B.* granteth the Reverſion to *H.* for Life, and afterwards *E.* dieth, and *F.* dieth without Iſſue of their Bodies, *&c. B.* ſhall have a Formedon in the Reverter in this Form:

Which C. *gave to* E. *and* F. *his Wife, and to the Heirs of the Bodies*, &c. *iſſuing, and which* G. *the Son and Heir of the ſaid* C. *Brother of the ſaid* B. *whoſe Heir he is, after the Death of the ſaid* E. *granted to* H. *for his whole Life,* [220.] *to have after the Death of the ſaid* F. *and which after the Death of the aforeſaid* F. *and* H. *ought to revert to the ſaid* B. *by Form of the Gift and Grant aforeſaid, becauſe the ſaid* E. *and* F. *died without Heirs of their Bodies iſſuing*, &c.

And it ſeemeth in that Caſe, that if *H.* had ſurvived *F.* and had entred into the Land, and had been ſeiſed of the Land for Term of his Life, and then had died, that then the ſaid *B.* ſhall not have a Formedon in the Reverter, but a Writ of Entry *Ad terminum qui præteriit.* But if *H.* have not entred into the Land after the Death of *F.* then the ſaid *B.* ſhall have the Writ of Formedon in the Reverter. But if *H.* have entred into the Land after the Death of *F.* and had aliened the Land in Fee, then *B.* ought to have had a Writ of Entry *in conſimili Caſu* during the Life of *H.* and after the Death of *H.* a Writ of Entry *Ad communem Legem.*

A And if *F.* leaſe Lands unto *P.* for Term of Life, and hath Iſſue a Son and a Daughter, and dieth, and the Son granteth the Reverſion to *I.* and to the Heirs of his Body begotten, and afterwards the Tenant for Term of Life dieth, and the Tenant in Tail dieth without Iſſue, *&c.* and then the Son who was Donor dieth, the Daughter ſhall have a Formedon in the Reverter in this Form:

Which F. *gave to* P. *for his whole Life, and which* T. *the Son and Heir of the ſaid* F. *Brother of the ſaid* B. *whoſe Heir he is, granted to* I. *to have after the Death of the ſaid* P. *to him the ſame* I. *and to the Heirs of his Body iſſuing, and which after the Death of the ſaid* P. *and* I. *ought to revert to the ſaid* B. *by the Form of the Gift and Grant aforeſaid, becauſe the ſaid* I. *died without Heir of his Body iſſuing, as he ſaith*, &c.

B And if Lands be given in Tail, and the Tenant in Tail hath Iſſue two Daughters, and afterwards one of the Daughters hath Iſſue a Daughter *B.* and the other Daughter hath Iſſue another Daughter *C.* and afterwards *B.* hath Iſſue *I.* and then all the Daughters die, and then the ſaid *I.* dieth without Iſſue of his Body, the Donor or his Heir ſhall have ſuch Writ:

And which after the Death of the ſaid E. *and* F. *and of* M. *and* A. *the Daughters and Heirs of the ſame* E. *and* F. *and of* I. *the Son of the ſaid* M. *and Heir of the ſame* M. *and* A. *ought to revert to the ſaid* I. *of* B. *&c. becauſe the aforeſaid* I. *Son of the ſaid* M. *died without Heir of his Body iſſuing*, &c.

C In a Formedon in the Reverter in his Count he ought to lay the Eſplees in the Donor, and in the Donee.

N.B. 150. D In a Formedon in the Reverter he ought to mention the eldeſt Brother who ſurvived his Father, *&c.* becauſe he held the Eſtate, although that he was not ſeiſed of the Land; as if the Donor hath Iſſue two Daughters and dieth, and the eldeſt Son dieth before he entreth into the Land. In a Formedon in the Reverter brought by the youngeſt Son, he ought to mention the eldeſt Son, who was his Brother, becauſe he was once Heir to the Donee; but if the eldeſt Son die in the Life-time of the Father, then the youngeſt Son in the Writ (*a*) brought by him ſhall not mention him as Heir to the Father, becauſe he was never Heir *in facto* to the Father, but in a Writ of Right, which is called *Præcipe in Capite*, brought by the youngeſt Son, as Heir to his Father, although the eldeſt Son be dead in the Life of the Father, yet in his Count he ought to make mention of the eldeſt Son, becauſe by Poſſibility he might have held the Eſtate, and have been Heir to his Father.

E And if a Man give Lands in Tail, and the Tenant in Tail hath Iſſue, and dieth, and the Iſſue dieth without Heir of his (*b*) Body before he entreth into the Land, the Donor may bring a Formedon in the Reverter, ſuppoſing that the Donee died without Iſſue, *&c.* and that Writ was awarded good, *M.* 18 *Ed.* 2. becauſe the Iſſue was not living at the Time of the Purchaſe of the Writ; and he cannot have a Formedon in the Reverter of the Seiſin of the Iſſue, becauſe the Iſſue died before he had any Seiſin of the Land.

Writ of Ejectione firmæ.

F. THE Writ of *Ejectione firmæ* lieth, where a Man doth (*c*) leaſe Lands for Years, *&c:* and afterwards the Leſſor doth eject him, or a Stranger doth eject him of his Term, the Leſſee ſhall have a Writ of *Ejectione firmæ*; and the Form of the Writ is ſuch: Vi. 1 & 2 Ma. Dyer 117. Ingrave's Caſe.

G *The King to the Sheriff*, &c. *If* A. *ſhall make you ſecure*, &c. *then put*, &c. B. *that he be before our Juſtices*, &c. *to ſhew wherefore with Force and Arms he entred into the Manor of* I. *which* T. *demiſed to the ſaid* A. *for a Term which is not yet paſſed, and the Goods and Chattels of him the ſaid* A. *to the Value of*, &c. *found in the ſame Manor, took and carried away and ejected him the ſaid* A. *from his Farm aforeſaid, and other Wrongs to him did, to the great Damage of*, &c. Dyer 228.

And there is another Form of Writ, thus:

(*a*) See 2 *Ed.* 3. 25. *N. Br.* 150. 18 *Ed.* 2. *Formedon* 59. The Plaintiff counts in this Writ, that he to whom the Tenements were given——And held that the Right came to the Donor, although the Donor was dead, living the Donee in Tail. But in a *Contra formam Collationis* it is otherwiſe, *F. Contra form' Coll'*, 7 *Ed.* 3. See 3 *Ed.* 3. *Formedon* 43.

(*b*) See 7 *Ed.* 3. 34. 18 *Ed.* 3. 28. *Eo quod* the Iſſue died without Iſſue; and ſo the Writ ought to be *per Shard*, when the Iſſue was ſeiſed. 22 *H.* 6. 36. 18 *Ed.* 3. 42. See a Formedon in Reverter awarded good, ſuppoſing that the Donee died without Iſſue, *where he had* Iſſue, who ſurvived and was ſeiſed; *contr.* in the ſame Caſe in a *Scire facias* by him in Remainder on an Eſtate Tail, 25 *Ed.* 3. 49. and *per Skip.* If the Iſſue was ſeiſed after the Death of the Donee, he ought to ſuppoſe that the Iſſue died without Iſſue; *ſed alii contr.* 26 *Ed.* 3. 75. See a Suppoſal, *per Mort.* of the Donee, *Eo quod* the Donee died without Iſſue. *Dyer* 216.

(*c*) *Note*; If he be not in actual Poſſeſſion at the Time of the Ejectment, this Writ does not lie. *Kelw.* 130. This Writ lies of a Gorſe. *Dyer* 228. 11 *Ed.* 10. *Ant.* 198. where it lies, *vide ibid.* and 21 *Ed.* 4. 10 and 30. 1 *H.* 5. 3. 12 *H.* 4. 10. *Dyer* 89.

Alſo this Writ lies againſt the Ejector, though he has aliened. 12 *H.* 4. 10. See *Dyer* 89. *Bona & Catalla* omitted.

6 R. 2. Fitz. Ejectione firm. econt. *To ſhew wherefore with Force and Arms into the Manor of* B. *which* I. *demiſed to the ſaid* A. *for the Term of ſeven Years, he entred within that Term, and occupied it for a long Time, and hindred him the ſaid* A. *whereby he was not able to perceive the Iſſues of the Manor aforeſaid according to the Demiſe aforeſaid, and took*, &c. *the Goods*, &c.

Plow. 222. 1 Salk. 5. Co.Lit.128.b. (*a*) And in that Writ he ſhall recover his Term again, if the Term be not ended, and the Proceſs is Attachment and Diſtreſs, and Proceſs of Utlagary. And *Anno* 14 *H.* 7. in *Ejectione firmæ* brought againſt a Stranger, the Plaintiff had Judgment for to recover his Term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and Execution awarded for the Plaintiff. H

And 17 *H.* 8. ſuch Judgment was given in the Common Pleas, that he ſhould recover his Term and his Damages. I

Ant. 198. [221.] If a Man leaſe Lands for Years, and afterwards ſuffer a feigned Recovery againſt him by a Writ of Entry in the *Poſt*, or other Writ, if he who recovereth entreth, the Termor ſhall have an *Ejectione firmæ* againſt him by Force of the Statute of 21 *H.* 8. *cap.* 15. becauſe the Statute giveth him Power to retain, hold and enjoy his Term. And by that it appeareth, that he who recovereth doth Wrong unto him, if he ouſt him of his Term; but before the ſaid Statute the Leſſee could not have ſuch Writ, becauſe he who recovered came in by Courſe of Law.

A And if a Man leaſe Lands for Years, and afterwards granteth the Reverſion in Fee, and the Leſſee attorneth; now if the Grantee of the Reverſion do put out the Termor, he ſhall have an *Ejectione firmæ* againſt him. And ſo if the Reverſion do eſcheat, and the Lord by Eſcheat eject the Termor, he ſhall have an *Ejectione firmæ* againſt him. B

C And if he in the Reverſion be a Villain, and the Lord claim the Reverſion, and afterwards eject the Termor, he ſhall have an *Ejectione firmæ* againſt him.

(*a*) And therefore he ſhall not have this Writ after a Re-entry, by *Huſſy*. 21 *Ed.* 4. 11. So Entry of the Plaintiff pending the Writ abates it. *Dyer* 226. Yet *quære*, 13 *Eliz.* 13. although the Plaintiff enters pending the Writ, he ſhall recover his Damages; for it is but an Action of Treſpaſs in its Nature. But the Entry here ſeemed to be after the Term ended; and *Dyer* ſaid, that before 14 *H.* 7. the Judgment was only, that the Plaintiff ſhould recover his Term. *Dyer* 13.

Writ of Aiel or Beſaiel.

D THE Writ of Aiel or Beſaiel lieth, where the Grandfather or Great Grandfather was ſeiſed in his Demeſne as of Fee of any Lands or Tenements of Fee-ſimple the Day of his Death, and dieth, and a Stranger doth abate or entreth the ſame Day upon him, and deforceth the Heir, the Heir ſhall have that Writ of Aiel or Beſaiel, as the Caſe is, and it behoveth not that the Grandfather die ſeiſed; or if he be ſeiſed the Day that he died, it ſufficeth to maintain this Action; and the Form of the Writ is ſuch:

Note, That in this Writ a Man cannot make Title higher than his Beſaiel, or the Brother of his Beſaiel, 3 Ed. 3. Item nota Fitz. Aiel 6. 40 Ed. 3. 38. It was found by Aſſiſe, that the Anceſtor did not die ſeiſed, yet no Eſtoppel to have Coſinage; for if he were ſeiſed the Day in which he died, it ſufficeth.

E *The King to the Sheriff*, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one Meſſuage with the Appurtenances in* E. *of which* W. *the Grandfather of the ſaid* B. or *Grandmother of the ſaid* B. or *Great Grandfather*, or *Great Grandmother of the ſaid* B. *whoſe Heir he is, was ſeiſed in his* (or *her*) *Demeſne as of Fee, upon the Day in which he died, as he ſaith, and unleſs he will do it, and the aforeſaid* B. *ſhall make you ſecure*, &c. *then ſummon*, &c. *the aforeſaid* A. *&c.*

In Aiel the Defendant ſaid, that the Aiel had Iſſue W. eldeſt Son, who ſurvived the Aiel; and committed Felony, and was abjured, and afterwards taken, and in Eyre adjudged a Felon; and good Plea. 6 Ed. 3. Fitz. Aiel.

F And the Proceſs in that Writ is Summons and Grand Cape before Appearance; and after Appearance, if the Tenant make Default, a Petit Cape ſhall be awarded.

G And although that the Anceſtor go in Pilgrimage beyond the Sea, and there dieth, yet the Writ of Aiel ſhall be general, as is aforeſaid. *Ant.* 196. 13 Ed. 3. Aiel 2.

And ſo if the Grandfather enter into Religion, and is profeſſed, the Heir ſhall have a Writ of Aiel, if the Stranger do abate, and the Writ ſhall be general, and ſhall not ſpeak of his Entry into Religion, or of his Profeſſion, *&c.* 21 Ed. 3. 10. Br. Coſinage.

H And the Aunt and the Niece ſhall join in a Writ of Aiel of the Seiſin of their Grandfather, by Equity of the Statute. And the Statute ſhall ſerve for thoſe dying ſeiſed before the Statute, as for thoſe dying ſeiſed ſince the Statute.

And two Coparceners brought a Writ of Aiel, and by their Count they did ſuppoſe the Anceſtor to be Great Grandfather to the one, Treſaiel to the other, and yet it was adjudged good. And the Writ in the Regiſter is ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *and* C. *one Mill*, &c. *of which* D. *the Grandfather of the ſaid* B. *and Great Grandfather of the ſaid* B. *whoſe Heirs they are, was ſeiſed*, &c.

6. In Beſaiel, the Releaſe of the Aiel Warranty is good Plea, 12 Ed. 3. Joinder in Action.

Writ of Coſinage (*a*).

22 Ed. 3. 13. cont.

THE Writ of Coſinage lieth, where the Treſaiel was ſeiſed in his Demeſne I
as of Fee, the Day he died, of any (*b*) Lands or Tenements, and dieth,
and a Stranger doth enter and abate, then his Heir ſhall have his Writ of Coſinage; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that juſtly*, &c. *he render to* B. *one* K
Meſſuage with the Appurtenances in N. *of which* (*c*) W. *the Couſin of the ſaid* B.
whoſe Heir he is, *was ſeiſed in his Demeſne as of Fee upon the Day wherein he died*, *as he ſaith*, *and unleſs*, &c.

And a Man ſhall have a Writ of Coſinage of the Seiſin of the Brother of L
the Treſaiel. 6 *Ed.* 2. *Coſin.* 10, 11.

22 Ed. 3. Brief 308. It is admitted that Treſaiel is Couſin.

And the Heir of the Lord who was his Treſaiel may have a Writ of Co- M
ſinage of the Rent of the Seigniory againſt the Tenant, if he deforce him of the Rent, and may count of the Seiſin of his Treſaiel; or if he will, he may have a Writ of Cuſtoms and Services againſt the Tenant at his Election.

46 Ed. 3. 15. 12 H. 7. 4. 4 Ed. 3. Aiel 4. 10 Ed. 3. 45. 12 H. 4. Coſin. 2. N. Br. 118. con.

And if a Man have a Writ of Aiel, he ſhall not bring a Writ of Coſinage, N
and if he do, the Tenant may abate the Writ by pleading the Seiſin of the Great Grandfather; and alſo a Man ſhall not have a Writ of Coſinage of the Seiſin of his Great Grandfather, but ſhall be put to his Writ of Beſaiel, *&c.*

Nor a Man ſhall not have a Writ of Coſinage of the Death of his Uncle, becauſe he may have an Aſſiſe of Mortdaunceſtor of his Seiſin.

44 Ed. 3. 13. 2 H. 5. 1. 21 H. 3. Coſin. 13.

And Coſinage doth not lie between Privies in Blood, no more than an Aſſiſe O
of Mortdaunceſtor, but ſhall be put to their *Nuper obiit*.

And if a Treſaiel goeth beyond Sea and entreth into Religion, and be profeſſed; yet the Writ of Coſinage ſhall be general, as the Writ of Aiel ſhall be.

14 Ed. 3. Coſin. 6. Supra G.

And the Proceſs is Summons, Grand Cape and Petit Cape.

(*a*) In Coſinage a Man makes but an oblique Deſcent only from the Brother of the Great Grandfather, which is four Degrees; but where the Deſcent is lineal, it is two Degrees. 30 *Ed.* 1. *Coſinage* 15. 32 *Ed.* 1. 34.

(*b*) See *contr.* that he is put to his Writ of Right, 22 *Ed.* 3. 16. 22 *Ed.* 3. 13. And *Note*; In ſome Writs, when it is paſt the Great Grandfather he ſhall be named Couſin; but in a Count ſo named, abates it. 15 *Ed.* 3. *Brief* 323.

(*c*) And he ſhall ſhew how Couſin in his Count. 12 *H.* 4. 1.

Writ of Ad quod Damnum.

THE Writ of *Ad quod Damnum* lieth, where a Man will give Lands or Tenements in Mortmain, as to a religious Houſe, or to a Body Politick in Fee-ſimple, then he ought for to have the King's Licence and the Licence of the chief Lords to make ſuch Gift or Grant, and before ſuch Licence be granted; and the Courſe is to ſue unto the King to have a Licence to ſue that Writ out of the Chancery, directed unto the Eſcheator to inquire what Damage it would be to the King, or unto other Perſons, if the King do grant ſuch Licence: And upon the Return of that Writ certified in the Chancery, the King ought to give Leave, that he may alien or give in (*a*) Mortmain; and that Inquiſition ought to be certified into the Chancery under the Seals of Eſcheator and of the Jurors, by whom the Inquiſition was found; and the Form of the Writ is ſuch:

A *The King to his beloved* I. *of* K. *his Eſcheator in the County of* L. *greeting:* [222.] *We command you, that by the Oath of honeſt and lawful Men of your Bailiwick, or of your County, by whom the Truth of the Matter may be better known, you diligently inquire if it may be to the Damage or to the Prejudice of us or of others, or not, if we grant to* B. *that he may give and aſſign one Meſſuage, two Acres of Land and one Acre of Meadow with the Appurtenances in* W. *to a certain Chaplain to celebrate Divine Service for the Soul of him the ſaid* B. *and the Souls of his Father, Mother and Anceſtors, and of all the faithful Deceaſed, in the Chapel of the bleſſed* Mary *of* W. *or in the Parochial Church of the bleſſed* Mary *of* S. *every Day; to have and to hold to the ſaid Chaplain and his Succeſſors celebrating Divine Service in the Church aforeſaid or in the ſaid Chapel for the Souls aforeſaid, every Day, as is before ſaid; and if it be to the Damage or Prejudice of us or of others, then to what Damage and what Prejudice of us, and to what Damage and what Prejudice of others, and of whom, and how and in what Manner, and of whom or what Perſons the ſaid Meſſuage, Land and Meadow are holden, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Iſſues, according to the true Value of the ſame, and who and how many Meſnes there are between us and the aforeſaid* B. *of the Meſſuage, Land and Meadow aforeſaid, and what Lands and what Tenements remain to him the ſaid* B. *beſides the Donation and Aſſignment aforeſaid, and where, and of whom or of what Perſons they are holden, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Iſſues, and if the Lands and Tenements remaining to the ſaid* B. *beſides the Donation and Aſſignment aforeſaid, be ſufficient for the Cuſtoms and Services owing to be done, as well for the Meſſuage, Land and Meadow ſo given, as for the other Lands and Tenements retained to himſelf, and all and ſingular other Charges which he ſuſtains, and hath been accuſtomed to ſuſtain, as in Suits, Views of Frank-pledge, Aids, Tallages, Watches,*

(*a*) Entry for Mortmain. *Note*; Diſſeiſor and Diſſeiſee, Tenant for Life, and he in Remainder of a Seigniory, ſhall have only one Year. *Kelw.* 171. *quære.*

Fines, Ranſoms, Amerciaments, Contributions, and other Charges whatſoever emerging to be ſuſtained; and that the ſame B. *may be put in Aſſiſes, Juries and other Recognizances whatſoever, as he might be put before the Gift and Aſſignment aforeſaid, ſo that the Country, by the Gift and Aſſignment aforeſaid, in Default of him the ſaid* B. *may not be charged or aggrieved more than uſual, and without Delay ſend the Inquiſition thereupon made diſtinctly and openly to us in our Chancery, under your Seal and the Seals of thoſe by whom it ſhall be made, and this Writ. Witneſs,* &c.

Or thus: *That the Heirs of him the ſaid* B. *may be put in Aſſiſes, Juries and other Recognizances whatſoever, as his Anceſtors have been accuſtomed to be put before the Gift and Aſſignment aforeſaid, ſo that the Country,* &c.

By which it appeareth, that it is Damage to the Country, that a Freeholder who hath ſufficient Lands to paſs upon Aſſiſes and Juries, ſhould alien his Lands in Mortmain, by which Alienation his Heirs ſhould not have ſufficient Lands after the Death of the Father to be ſworn in Aſſiſes and Juries.

And by the Rule of the Regiſter, if a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quod Damnum* ſhall be that Clauſe, *And that they the ſaid,* &c. *may be put in Aſſiſes, Juries and other Recognizances whatſoever,* by which it appeareth, they ought to have ſufficient Lands, beſides Lands to deſcend to their Heirs.

C And if a Chaplain and Layman will alien in Mortmain jointly by Licence, then the Writ of *Ad quod Damnum* ſhall be in this Form:

And that the ſaid A. *and* B. *and the Heirs of the ſaid* B. *the Chaplain, may be put in Aſſiſes, Juries,* &c. *as the ſaid* A. *and the Anceſtors of him the ſaid* B. *the Chaplain, have been accuſtomed to be put before the Gift,* &c. *ſo that the Country,* &c. *in Default of him the ſaid* A. *and of the Heirs of the aforeſaid* B. *may not be charged,* &c. *more than uſual,* &c.

D And if one Abbot will give Lands or Tenements in Mortmain to another Abbot or Prior or Body Corporate, yet he ought to have the (*a*) King's Licence ſo to do, becauſe of the Words of the Statute of Mortmain: *So that the Lands and Tenements may not by any means come into Mortmain.* And there he ought for to ſue a Writ of *Ad quod Damnum* to inquire as aforeſaid: But in the Writ ſhall be this Clauſe, *And that he the ſaid Abbot,* &c. *may be put in Aſſiſes and Juries,* &c. nor that Clauſe, *Ita quod patria, &c.* ſhall not be put in that Writ of *Ad quod Damnum.* But now the common Experience is, that they will not ſue the Writ of *Ad quod Damnum* when they purchaſe Leave to alien in Mortmain; but the Uſe is, to have theſe Words in the End of the King's Patent of Licence; *And this, without any Writ of* Ad quod Damnum, *or our other Writs and Inqueſts or Commands thereupon, to have and proſecute.* But it ſeemeth thoſe Patents are dubious whether they be good or no; if it be evidently proved, that ſuch Patents are unto the Damage of others who are the King's Tenants, and by which the King's Tenants ought to have Wardſhips or Eſcheats, *&c.* and by which the King loſeth the Wardſhip of his Tenants, or that the King loſeth any Advantage which he might have, if

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(*a*) And therefore if the Tenant infeoffs the Abbot himſelf, the Lord may enter. *Kelw.* 111.

ſuch Patents were not granted. And therefore I conceive that the beſt Courſe is, to ſue forth ſuch Writs of *Ad quod Damnum* to inquire to what Damage ſuch Licences in Mortmain ſhall be to the King or others, ſo that the King be not deceived in his Grant. And ſee a good Cauſe for the ſame in the Title of *Grants* in the Abridgment. *H.* 16 *Ed.* 3. *pl.* 53. *Bro.* 651. where the Charter was repealed. [223.]

A And there is another Writ of *Ad quod Damnum*, if it be to the Damage, *&c.* If the King grant to *B.* that he may give five Houſes, *&c.* to *C.* Guardian of the Chapel of our Lady Saint *Mary*, and to his Succeſſors, Guardians and Chaplains of the foreſaid Chapel, for the Maintenance of the ſaid Guardian and two Chaplains to do Divine Service in the ſaid Chapel and in the Church of *P.* &c. in the Honour, *&c.* and for the Souls, *&c.*

B And if the King will give Licence to one to grant a Rent unto an Abbot and his Succeſſors, yet he ought for to ſue forth a Writ of *Ad quod Damnum*, if he have not theſe Words in the Patent; and this without any Writ of *Ad quod Damnum*, *&c.* And the Form of the Writ is ſuch: 3 Ed. 4. 14. 9 H. 7. 9. 4 H. 6. 9.

If we grant to him the ſaid A. *that he may give and aſſign one hundred Marks Rent with the Appurtenances in* N. *to our beloved in Chriſt the Abbot and Convent of* N. *and to the Prior and Monks in the Priory of Saint* James, Briſtol, *(which is a Cell of the ſaid Abby for thoſe abiding there) to find two Chaplains,* &c. *in the Church of the ſaid Priory, to hold to the ſame Abbot and Convent and Priory, and Monks dwelling in the ſaid Priory, and to their Succeſſors, to find two Chaplains,* &c. *in the Church of the ſaid Priory, as is before ſaid, to celebrate Divine Service every Day for ever, or not? And if it be to the Damage,* &c. *to what Damage,* &c. *and of whom or what Perſons the ſaid Rent is holden, and by what Services, and how and in what Manner, and who and how many Meſnes are there,* &c. (as in the firſt Writ).

And it is not ſaid in the Writ what the Value is yearly, becauſe Rent ought not to be extended.

C And if a Man ſue to the King for a Licence to give an Advowſon to two Chaplains and to their Succeſſors to hold to their proper Uſe, and that they may hold the ſame to them and their Succeſſors, appropriate for ever, to ſay Divine Service, *&c.* he ſhall have a Writ of *Ad quod Damnum* to inquire what Damage ſuch Grant would be to the King or others, and that Writ appeareth in the Regiſter.

D And in the Writ of *Ad quod Damnum* the Subſtance of the Licence to alien in Mortmain ought to be expreſſed.

E And if a Man will exchange Lands, Tenements or Rents with another Abbot or Body Corporate, upon the Licence (*a*) granted, he ought to ſue forth a Writ of *Ad quod damnum*; and in the Writ both the Lands which are given, and the Lands which are taken in Exchange, ought to be mentioned, and to inquire of them, as afore is ſaid.

F There is another Manner of Form of *Ad quod Damnum*, where the King granteth a Licence unto an Abbot or a Prior to purchaſe twenty Pounds Land, and afterwards one Man will give Lands to the ſaid Abbot of the

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(*a*) See 19 *Ed.* 3. *Mortm.* 8. Both of them were Men of Religion.

Value of five Pounds, another will give him Lands of the Value of forty Shillings, and another Man Lands of the Value of twenty Shillings; the Form of the Writ of *Ad quod Damnum* ſhall be ſuch:

The King to his Eſcheator, &c. *We command you*, &c. *if it may be to the Damage of*, &c. *if we grant to* A. *that he may give and aſſign one Meſſuage and forty Acres of Land with the Appurtenances in the ſame Town, and if we grant to* E. *of* F. *that he may give and aſſign thirty Acres of Land in the ſame Town, to our beloved in Chriſt*, &c. *to hold to them and their Succeſſors in Part of Satisfaction of* 2 H. 7. 6. *twenty Pounds of Lands and Rents by the Year, which Lord* Edward *lately King of* England, *our Grandfather, granted Licence to purchaſe by his Letters Patent to them the ſaid Abbot and Convent, as well of their own Fee as of other, except of Lands and Tenements which were holden of him our ſaid Grandfather in Chief: And alſo to* I. *of* N. *that he may give and aſſign one Meſſuage with the Appurtenances in the ſame Town to the ſame Abbot and Convent, to have and to hold to them and their Succeſſors for ever, in Exchange for one Meſſuage in the ſame Town to be given and granted to him the ſaid* I. *of* N. *by the ſaid Abbot and Convent, to have and to hold to him the ſaid* I. *of* N. *and his Heirs, in Exchange aforeſaid* (as before is ſaid) *for ever, or not? And if it may be to the Damage*, &c. (as before).

Vide 16 Eliz. Plow. Com. 457. D. 1 Inſt. 52. b.

And by that Writ it appeareth, that he may have one Writ for divers Purchaſes to be made; and alſo that a Licence made unto an Abbot, in the Time of one King, is good to purchaſe Land in the Time of another King. G

There is another Writ of *Ad quod Damnum* where the King granteth to an Abbot or to a Biſhop Licence for to purchaſe an Advowſon, and to appropriate the ſame to him and his Succeſſors for ever. H

And another Writ where the King granteth unto an Abbot or Biſhop Licence for to appropriate an Advowſon whereof they are ſeiſed in Fee in their own Right.

14 Ed. 3. Quar. imp. 13.

By which it appeareth, that a Biſhop or an Abbot could not have appropriated an Advowſon, whereof they were ſeiſed in Fee in their own Right, without the King's Licence; and if they did, it was forfeited for Mortmain. 21 *Ed.* 3. 5.

38 Aſſiſe 52. Br. Mortm. 20. it is no Mortmain. 21 Ed. 3. 18. Br. Mortm. 16 & 31. it is no Mortmain, becauſe the Rent is extinct.

And if an Abbot holdeth of another Man by a certain Rent-Service, the Lord (*a*) cannot releaſe unto the Abbot that Rent without the King's Licence; and if he do, it is Mortmain, and the King ſhall have the Rent; and therefore is the Writ of *Ad quod Damnum* ordained, that where the Lord hath Licence to releaſe unto the Abbot that Rent, to inquire to whoſe Damage the ſame ſhall be, *&c.* as it ſhall be of Lands, *&c.* I

There is another Form of *Ad quod Damnum* where the King giveth a Licence to alien Lands and an Advowſon, which are holden of him *in Capite*, unto an Abbot, and that he do appropriate them. And another Form of [224.] Writ where the King granteth a Licence to one to alien certain Lands, and a Reverſion of other Lands, to a Chaplain in Mortmain. A

(*a*) But if he releaſes the Rent, ſaving to himſelf the Services; or if he releaſe to hold of him in Frankalmoigne, it is not Mortmain. 10 *Ed.* 3. 5. 21 *Ed.* 3. 18. *Quære.* 10 *Ed.* 3. *Mortm.* 17. *Bro. Mortm.* 31.

B And if the Villain of an Abbot or Prior do (*a*) purchaſe Lands or Tenements in Fee, the Abbot or Prior cannot enter into them without the King's Licence; and if he do, it is Mortmain. And it ſeemeth that the Law is ſuch, becauſe there is a Writ of *Ad quod Damnum* in the Regiſter to inquire to whoſe Damage the ſame is; and if the King granted ſuch Licence unto an Abbot or Prior, that they may enter into ſuch Lands or Tenements which their Villains have purchaſed.

C And ſee the Statute *De Religioſis* how that Caſe ſhall be taken to be within the Words of the Statute, or by Equity of the Statute.

And it appeareth by the ſeveral Forms of Writs of *Ad quod Damnum* which are in the Regiſter, that the Writ ought to be made according to the Letters Patent of Licence, becauſe he ought to rehearſe the Effect of the Letters Patent therein; and therefore the Forms of the Writs of *Ad quod Damnum* do D vary as the Letters Patent themſelves do vary. And it appeareth by the Regiſter, that if a Man do purchaſe Letters Patent of Licence to give Lands unto an Abbot in Exchange for a Rent, which the Abbot releaſeth to him, &c. that he ſhall have a Writ of *Ad quod Damnum* thereupon.

16 Ed. 3. Excha. 2. Perk. 2.

E And if a Man do purchaſe a Licence to found a Houſe with Lands, or to make a Prebendary, and to give Lands to the ſame, &c. that he ought to have a Writ of *Ad quod Damnum* upon the ſame.

F And if a Man doth deviſe Lands or Rents to his Executors and to their Heirs, to diſpoſe according to his Will, and afterwards he maketh his Will, that they give the ſame in Mortmain; they ought to have the King's Licence to make the Grant, and a Writ of *Ad quod Damnum* upon the ſame, as appeareth by the Regiſter.

G If an Abbot or a Dean and Chapter have a Rent in Fee iſſuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Succeſſors ſhall diſtrain for that Rent in other Lands, it appeareth by the Regiſter, that he ought to have the King's Licence to make ſuch Grant: And a Writ of *Ad quod Damnum* ſhall be to inquire what Damage or Prejudice the ſame ſhall be to the King or others, &c. and yet it is hard to prove, how that ſhall be taken to be within the Words of the Statute of Mortmain, becauſe ſuch Grant is a good Grant of a Rent in Fee, although that there were not ſuch Rent before to the Abbey or Dean and Chapter. It ſeemeth, that the Grant made without Licence (*b*) ſhall be as a new Grant in Law. *Tamen quære.*

17 Ed. 3. 57.
29 Ed. 3. 33.
21 Ed. 3. 24. cont.
7 Ed. 3. 57. cont.
9 H. 6. 9.
Litt. 48.
41 Ed. 3. 15.
9 H. 6. 9.
1 Aſſ. 10.
Br. Aſſ. 105.

H There is another Manner of *Ad quod Damnum*, and that is, where the King's Tenant will alien his Lands which he holdeth of the King to another in Fee, or in Tail, or for Life, then by the Courſe of Law he ought to have the King's Licence by his Letters Patent ſo to do, and before the Alienation be made, the King ought to be certified by a Writ of *Ad quod Damnum* what Damage or Prejudice that Alienation ſhall work to the King: But at this Day that Writ is not uſed to be granted, but only the Licence to alien without regard to any Writ of *Ad quod Damnum* to inquire thereof. But yet ſuch

32 H. 6. 27. cont. 41 Aſſ. 3. cont. 10 Aſſ. 4. cont.

(*a*) But it is otherwiſe, where the Villain has the Lands by Deſcent. 48 *Ed.* 3. 29. 41 *Ed.* 3. 16. 19 *H.* 6. 57. 13 *Ed.* 3. *Brief* 262.

(*b*) See this ſame Caſe in Queſtion, 9 *H.* 6. 9.

Licence muſt not be allowed of by the Juſtices when the ſame is ſhewed, without bringing a Writ out of the Chancery unto the Juſtices, which is called *Quod permittat, &c.* for which ſee *M.* 33 *H.* 6. in Title *Fines.* And the Form of the Writ of *Ad quod Damnum* is ſuch:

The King to his Eſcheator, &c. *We command you,* &c. *diligently inquire if it may be to the Damage or Prejudice of,* &c. *if we grant to* I. *that he may enfeoff* P. *of his Manor of* N. *with the Appurtenances, which are holden of us in Chief, as it is ſaid, to have and to hold to him and his Heirs, of us and our Heirs, by the Services thereof due and accuſtomed, for ever, or not? And if it may be to the Damage and Prejudice of us, or of others,* &c. *and what Prejudice of others, and of whom, and how, and in what Manner, and whether the ſaid Manor be holden of us in Chief, (as before is ſaid) or of any other; and if of us, then by what Service, how and in what Manner, and how much the ſaid Manor is worth by the Year in all Iſſues, according to the true Value of the ſame; and if any Lands and Tenements remain to him the ſaid* I. *beſides the Manor aforeſaid, then what Lands and Tenements, and where and of whom, or of what Perſons they are holden, to wit, whether of us, or of any other; and if of us, then by what Service, and how and in what Manner; and if of any other, then of whom, or of what Perſons, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Iſſaes. And the Inquiſition thereof,* &c. *diſtinctly and openly,* &c.

And if the King will grant a Licence unto his Tenant who holdeth of him *in Capite* to alien unto another in Fee, and to take back an Eſtate unto him and his Wife, and unto the Heirs of their two Bodies begotten, from the ſame Alienee; and for Default of ſuch Iſſue, the Remainder unto another in Fee-tail; and for Default of ſuch Iſſue, the Remainder to the right Heirs of the [225.] firſt Donee; he in that Caſe ſhall have a Writ of *Ad quod Damnum, &c.* to enquire, *&c.* and yet ſuch Writs are not uſed to be granted upon ſuch Licence.

There is another Writ in the Regiſter, that if the King's Tenant doth alien his Lands, of which a Woman holdeth Part in Dower for Term of her Life, and another holdeth other Parcel thereof for Term of her Life, and he himſelf holdeth the Reſidue in Fee: Now he ſhall have a Writ of *Ad quod Damnum,* rehearſing all the Eſtates and Licences.

If the King granteth Lands to one for Life, and afterwards granteth the B Reverſion to *D.* in Fee, and then *D.* dieth, and his Heir granteth the Reverſion to *R.* and *W.* in Fee, and afterwards *R.* and *W.* grant the Reverſion to *M.* for Life, and all thoſe Grants are made without Licence, and afterwards *M.* ſueth to have a Licence, that ſhe may enter after the Death of the firſt Tenant for Life; ſhe ſhall firſt have a Writ of *Ad quod Damnum,* to enquire, *&c.* and the Writ ſhall be ſuch:

The King to his beloved Clerk F. *of* C. *his Eſcheator in the County of* C. *greeting:* M. *hath beſought us, That, whereas* A. *heretofore granted, that one Meſſuage with the Appurtenances in* N. *(which is holden of us in Chief (as it is ſaid,) and which* I. *and* B. *his Wife, hold for the Life of her the ſaid* B. *of the Demiſe of the ſaid* A. *which alſo after the Death of her the ſaid* B. *ought to revert to the aforeſaid* A. *and his Heirs) after the Death of the ſaid* B. *ſhould remain to* D. *and his Heirs; and* F. *the Son and Heir of him the ſaid* D. *further granted, that the Meſſuage aforeſaid with the Appurtenances, (which ought to revert to him the* *ſaid* F. *and his Heirs, by reaſon of the Grant and Attornment to him in this Behalf made) after the Death of the ſame* B. *ſhould remain to* R. *and* W. *and their Heirs; and they the ſaid* R. *and* W. *granted, that the Meſſuage aforeſaid with the Appurtenances, (which ought to revert to them the ſaid* R. *and* W. *and their Heirs, after the Death of the ſaid* B. *by reaſon of the Grant and Attornment aforeſaid to them made of the Premiſſes) ſhould remain after the Death of the ſaid* B. *to the ſaid* M. *for her whole Life, ſo that after the Death of the ſaid* M. *that Meſſuage with the Appurtenances, after the Death of the ſaid* B. *ſhould remain to* K. *and the Heirs of him the ſaid* K. *our Licence hereupon not being obtained: We would grant to her the ſaid* M. *that ſhe may enter the ſaid Meſſuage with the Appurtenances, after the Death of the ſaid* B. *and hold the ſame for her whole Life, of us and our Heirs, by the Services thereof due and accuſtomed, ſo that after the Death of her the ſaid* M. *the ſaid Meſſuage with the Appurtenances, may remain to the ſaid* K. *and the Heirs of the ſaid* K. *to be holden of us and our Heirs, by the Service aforeſaid, for ever: We being willing to be certified by you, whether we may (in this Behalf) aſſent to the Prayer aforeſaid, without Damage or Prejudice of ourſelves, or of any other Perſon whatſoever, command you, that by the Oath of,* &c. (as above, until) *or of others, if we grant to the ſaid* M. *that ſhe may enter and hold the Meſſuage aforeſaid, with the Appurtenances, after the Death of her the ſaid* B. *in Form aforeſaid, or not? And if,* &c. (as before).

And by that it appeareth that an *Ad quod Damnum* ſhall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might grant for a Fine for Alienation. And alſo it doth appear by that Writ, that a Clerk and a Chaplain was then Eſcheator of the County.

C And if *B.* the King's Tenant doth alien to *A.* in Fee, and afterwards *A.* giveth back the ſame Lands to the ſame *B.* and *C.* his Wife in Tail, and then *A.* dieth, and then *B.* dieth without Heir of his Body, and afterwards *D.* Brother and Heir of *A.* doth releaſe all his Right in the Land unto *C.* who was the Wife of *B.* in Fee without the King's Licence, if the King will pardon that Treſpaſs for making of that Releaſe, a Writ of *Ad quod Damnum* ſhall be awarded to enquire what Damage or Prejudice the ſame ſhall be to the King, and the Writ appeareth in the Regiſter; but ſuch Writs are not uſed to be ſued forth at this Day, but ſuch Pardons are allowed for the Tertenant, without any ſuch Writ of *Ad quod Damnum, &c.* But yet if the King be damnified by any ſuch Pardon, in any Point whereof he had Notice; whether the ſame ſhall make void the Pardon or not, *Quære.*

D And if the King will grant to one to make a Ditch of a certain Length in his own Land, next to the King's Pond adjoining, to draw the Water from the Pool by the Ditch to his Mill, rendring yearly to the King and his Heirs a certain Rent, a Writ of *Ad quod Damnum* ſhall be awarded for to enquire what Damage the ſame ſhall be to the King, and the Writ ſhall recite the Grant, and the Rent reſerved.

E And if there be an ancient Trench or Ditch coming from the Sea, by which Boats and Veſſels uſe to paſs to the Town, if the ſame be ſtopped in any Part by Outragiouſneſs of the Sea, and a Man will ſue to the King to make a new Trench, and to ſtop the ancient Trench, *&c.* they ought firſt to ſue a Writ of *Ad quod Damnum,* to inquire what Damage it will be to the King or others.

F And if the King will grant to any City the Aſſiſe of Bread and Beer, and the Keeping of Weights and Meaſures, an *Ad quod Damnum* ſhall be firſt awarded, and when the ſame is certified, *&c.* then to make the Grant.

And it appeareth by the Regiſter, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other Things, that a Writ of *Ad quod Damnum* ſhall be firſt directed to the Eſcheator, to inquire what [226.] Damage it will be to (*a*) the King or others; and in thoſe Writs in the Regiſter, appear notable Forms of Grants made in divers Manners; for in every Writ the Manner of the King's Grant, and the Effect thereof is ſpecified and recited in the Writ of *Ad quod Damnum.*

A And if a Man will give Lands unto the King in Fee, unto the Intent that the King ſhall give them to a religious Houſe, yet a Writ of *Ad quod Damnum* ſhall be directed to the Eſcheator to inquire what Damage that ſhall be to the King, or others, if the King ſhould accept thereof, and give the ſame to the religious Houſe.

B And if the King ſeizeth Lands aliened in Mortmain, and afterwards will give them again to the Abbot, *&c.* in Fee, yet a Writ of *Ad quod Damnum* ſhall be awarded, to inquire to whoſe Damage it ſhall be, *&c.*

And ſo if an Abbot purchaſeth Lands without Licence, and afterwards the King will pardon him for the Purchaſe, and grant that he may retain and keep the Lands, yet an *Ad quod Damnum* ſhall iſſue to inquire, *&c.*

C And if the King's Tenant doth alien without Licence, for which the King ſeizeth the Lands: If the King will reſtore the Lands, and pardon the Treſpaſs, yet the Writ of *Ad quod Damnum* ſhall iſſue forth to inquire what Damage it is to the King, if he make ſuch Grant; but that is not in uſe at this Day; but to pay a Fine, and upon the Licence to enter, without ſuing ſuch Writ.

If the King be Lord, and there be Meſne and Tenant, and the Tenant holdeth of the Meſne by Homage and twenty Shillings, and the Meſne holdeth of the King *in Capite*, and afterwards the Meſne doth releaſe unto the Tenant the twenty Shillings, to hold to him and his Heirs by Homage, and a Penny, without the King's Licence, the King may ſeize thoſe Services; and if he will by his Grant make Reſtitution to the Tenant Paravail, an *Ad quod Damnum* ſhall be granted, to inquire to whoſe Damage, *&c.*

D And it appeareth by the Regiſter, that if the King's Tenant doth intrude after the Death of his Anceſtor without ſuing his Livery, if the King will pardon the Intruſion, yet a Writ of *Ad quod Damnum* ſhall iſſue to inquire to whoſe Damage the King's Pardon ſhall be, *&c.*

E If a Foreſter of the King's Foreſts, who holdeth his Office of the King, granteth the ſame to another, he ought to have the King's Licence; and before ſuch Licence ſhall be granted, a Writ of *Ad quod Damnum* ſhall iſſue, what Damage ſuch Licence ſhall be to the King.

(*a*) *Note*; If the King grants Liberties; as a Market, Fair, *&c.* to the King's Nuſance, after the King has loſt any Profit, he may have a *Scire facias*, and repeal the Patent, and recover all the Profits taken by the Patentee in the mean Time, *per Cur.* 11 *H.* 4. 5. See 16 *Ed.* 3. *Grants* 53. what Liberties the King may grant, *Vide poſt.* 230.

F And ſo if the King will licenſe one to cut down his Trees or his Wood in his Foreſt, and to make Aſſart of the Wood, or to put it to Tillage, a Writ of *Ad quod Damnum* ſhall be awarded, as appeareth by the Regiſter.

G And if the King will grant Parcel of his Waſte within his Foreſt to another in Fee, rendring Rent, and that the Feoffee may incloſe the ſame with a Hedge or a Ditch, *&c.* a Writ of *Ad quod Damnum* ſhall be awarded, to inquire to what Damage of the King or others the ſaid Grant ſhall be.

And if he will leaſe the ſame for Years, rendring Rent, a Writ of *Ad quod Damnum* ſhall be awarded to the Keeper of the Foreſt, to what Damage of the King or of his Foreſt the ſame ſhall be.

And if the King will grant Part of his Free Chaſe to one in Fee rendring Rent, and that he may incloſe the ſame with Hedge and Ditch, *&c.* a Commiſſion ſhall be directed to certain Perſons, to inquire what Damage to the King or others the ſame ſhall be, *&c.* and thereupon a Writ ſhall be directed to return the Inqueſt and Panel before the Commiſſioners at a certain Day aſſigned by the Commiſſioners; and the Commiſſioners ſhall make a Precept to the Sheriff to do the ſame, and to return them at the Day appointed by them by their Precept.

H And now it (*a*) appeareth by thoſe Words in the Regiſter, that in ancient Times, upon every Grant, Leaſe, Releaſe, Confirmation or Licence to be made by the King, that firſt a Writ of *Ad quod Damnum* was to be awarded, to inquire of the whole Truth and every Circumſtance thereof, and what Damage or Prejudice the King ſhould have by the ſame; and upon ſuch Inquiſition certified and returned, to make the Grants, Releaſes, Confirmations or Licences.

But now the Experience is contrary, but in the Patents of Grants of Licence, they put in the End theſe Words,

And this without any Writ of Ad quod Damnum, *or any other Writ, or Inqueſts, or Commands, thereupon, to be had, done, or proſecuted,* &c.

But in Patents of Licences, or in a Patent of Releaſe or Confirmation made by the King, theſe Words, *Without any Writ of* Ad quod Damnum, *&c.* are not in thoſe Patents of Releaſes or Confirmations: But yet by Reaſon of the ancient Courſe and Form of the Regiſter, it ſeemeth that the Patents were the better if theſe Words, *And this without any Writ of* Ad quod Damnum, were put into the Patents. *Quære* of the Rigour of the Law, what ſhall be done in thoſe Caſes where the Patents want thoſe Words, *&c.*

(*a*) See 2 *Ed.* 3. 6. 16 *Ed.* 3. *Brief* 651. *Grants* 53. That if a Patent of Liberties be made without Inquiry by *Ad quod Damnum,* by Grant whereof the Intereſts of other Perſons are prejudiced; the King is ſuppoſed to be deceived, and the Patent ſhall be repealed in a *Scire facias.*

Writ of being quit of Toll.

I THE Writ to be quit of Toll lieth, where the Citizens or Burgeſſes of any City or Borough have been quit of (*a*) Toll throughout the Realm by Grants of the King's Progenitors, or by Preſcription; then if the ſaid Citizens, or any Man of the ſaid Cities or Boroughs, come with their Merchandiſes unto any Fair or Market, and there ſell them, or buy any Merchandiſe, if the King's Officer will demand Toll of them againſt the King's Charter or againſt the Uſage or Cuſtom, then they may ſue forth and have ſuch Writ; *viz.*

[227.] (*b*) *The King to his Bailiffs of* I. *greeting: Whereas we granted by our Charter to the Burgeſſes of our Town of* S. *that they and their Heirs and Succeſſors, Burgeſſes of the ſame Town, ſhould be for ever quit of Toll throughout our whole Realm and Dominion; We command you, that you permit thoſe Burgeſſes to be quit of yielding Toll to you in our ſaid Town, according to the Tenor of our Charter aforeſaid, not moleſting or in any wiſe aggrieving them contrary to the Tenor thereof. Witneſs*, &c.

A And upon that he may have an *Alias*, a *Pluries* and Attachment againſt the Bailiffs, or thoſe that do grieve him againſt the Form of the Charter: And the *Pluries* is returnable in the King's Bench, or in the Common Pleas, at the Will of him who would have it. And in that Writ ſhall be the Clauſe, *Or ſignify the Cauſe to us.*

And if the Grant to be quit of Toll be of the Grant of the King's Progenitors, then the Form of the Writ is ſuch:

The King to the Bailiffs of I. *of* E. *greeting: Whereas amongſt other Liberties granted to the Burgeſſes* (*c*) *of our Town of* C. *by the Charters of our Progenitors ſome time Kings of* England, *it is granted to them, that they and their Heirs for ever ſhould be quit of Toll throughout our whole Realm, which ſaid Charters we*

(*a*) See 30 *Ed.* 3. 15. where is a Writ againſt the King's Bailiffs, and common Farmers in taking Toll, *&c.* For taking and detaining of Goods, *&c.* contrary to the Law and Cuſtom of the Realm, to the Wrong and Deſpight of the King, and Prejudice of his Farm, and to the Damage of the Plaintiff.

Note; The Preſcription ought to be in the Affirmative, *viz.* to be quit of Toll, and not that he had not paid Toll. 14 *H.* 6. 12.

(*b*) Toll-traverſe lies in Preſcription, but not Toll-through; for it is an Oppreſſion of the People, 22 *Aſſ.* 58. yet ſee a common Perſon may preſcribe for Toll-through, if he ſhews a reaſonable Cauſe, and prove that the Country has a Recompence, 14 *Ed.* 3. *Bar.* 275. 5 *H.* 7. 10. and ſo the King may preſcribe for Toll-through; *quære*, if without ſhewing Cauſe. 11 *H.* 6. 39. *vide infra.*

(*c*) *Note*; Toll-traverſe may be by Preſcription or Grant; but Toll-through cannot be by either Grant or Preſcription. 22 *Aſſ.* 58. 20 *Ed.* 3. *Toll* 3. *Note*; Toll-through is in the Highway, but Toll-traverſe is for paſſing over another's Land; yet it ſeems if a Highway be in a City or Town, Toll-through may be there by Preſcription, 5 *H.* 7. 10. 13 *H.* 4. 15. and Pontage, Murage or Ferry may be demanded in a Highway by the King's Grant, but not in a private Way, 13 *H.* 4. 15. and ſee there that the King may grant Tronage, and good: And *Note*; Every new Office ought to be proclaimed as well as granted. *Ibid.*

Note; If the King grants to one to be quit of Toll, this does not extend to Cuſtom, as it ſeems, nor is it any Bar to a Demand of Toll by them who have Toll by a prior Grant made to them. 39 *Ed.* 3. 13. See 18 *Ed.* 1. *Lib. Parl.* 10.

have already confirmed by our Charter, and have moreover granted to them, that although they have not fully uſed any of the Liberties and Quittances contained in the ſame Charters until this preſent Time; nevertheleſs they, their Heirs and Succeſſors for the Time to come, may enjoy and uſe the Liberties and Quittances aforeſaid, and every of them, without Diſquietude or Hindrance; We command you, &c.

C But that laſt Clauſe ſhall not be in the Writ, if the King have not made ſuch Confirmation to them: And upon that he may have an *Alias* and a *Pluries*, and an Attachment, if need be, againſt thoſe who take the Toll, *&c.*

D And the like Writ may be for thoſe who ought to be quit of Murage, Pontage, Picage, Laſtage, Paſſage, and the like, if they be grieved or diſturbed.

And it appeareth in the Regiſter, that King *Edward* the Firſt did grant unto Merchants, Strangers and Aliens, that they ſhould be quit of Murage, Pannage and Pontage, *&c.* If they were grieved and diſturbed for the ſame, they ſhould have ſuch Writ; *viz.*

The King to his Collectors of Murage, Pannage and Pontage in the Town of S. *greeting: Whereas in Conſideration of the Payments and Cuſtoms to us by Merchants, Strangers and Aliens, of their Goods and Merchandiſes brought into our Realm, it is granted to them by the Charter of Lord* Edward *of renowned Memory, ſome time King of* England, *our Grandfather (which we have inſpected) that they ſhall come ſafely and ſecurely into our Realm and Dominion with their Merchandiſes whatſoever, and be free and quit of Murage, Pannage and Pontage, as in the ſaid Charter is more fully contained: We command you, that you permit* B. *and his Companions, Merchants of the Company of,* &c. *Aliens, to be quit of yielding Murage, Pannage and Pontage in the ſaid Town, according to the Tenor of the ſaid Charter, not moleſting or in any wiſe aggrieving them contrary to the Tenor of the ſame; and releaſe to them the Diſtreſſes without Delay (if you ſhall have made any upon them on that Occaſion) and if you ſhall have levied any Thing upon them ſince the 20th Day of* Auguſt *in the Year,* &c. *on that Occaſion, reſtore it to them without Delay. Witneſs,* &c.

E And if any City or Borough ought to be quit of Toll for the Merchandiſes which they buy in another Town or Place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the Name of their Corporation, and may have an *Alias* and Attachment thereupon, if need be, with theſe Words at the End of the Writ, *And the Diſtreſs, if any, ſhall be made upon them on that Occaſion,* &c. as before.

F And the like Writ a Man may have againſt thoſe who will compel him to pay a certain Sum of Money towards Reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Regiſter, that ſpiritual and religious Perſons ought to be quit of Toll, Cuſtoms, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the ſame, they ſhall have ſuch Writ:

The King to his Bailiffs of B. *greeting: Whereas eccleſiaſtical Perſons, according to the Cuſtom hitherto uſed and approved in our Realm* (*a*), *are by no means bound*

(*a*) See *Rot. Parl.* 8 *Ed.* 2. *m.* 4. *ſuper Petition' Decan' & Capitul' Lincoln' eſſe quiet' de Paviagio. Reſp' quod ſi ipſi vel Famuli ſui juvandi ſtudio Mercaturas exerceant ſolvant inde Paviagium prout decet.*

to yield Toll, Pannage and Murage of their eccleſiaſtical Goods any where in the ſame Realm; We command you, that you do not diſtrain R. *Parſon of the Church of* E. *to yield to you Toll, Pannage or Murage of his eccleſiaſtical Goods in our ſaid Town, contrary to the ſaid Cuſtom; yet ſo that he do not exerciſe any Merchandiſe with the ſame; and the Diſtreſs, if any,* &c.

But *Herle* Juſtice ſaid, that theſe Words, *Dum Merchandiſas aliquas, &c.* were of no Effect, becauſe, by his Opinion, they are acquit of all Things, although they do merchandize: But now the Statute of *H.* 8. is, that they ſhall not merchandize.

And another Form of Writ for ſpiritual Perſons is in this Form:

Whereas according to the Cuſtom, &c. *obtained, eccleſiaſtical Perſons ought not to yield any Toll or other Cuſtom of their eccleſiaſtical Goods, or of other Things bought for their Suſtenance; We command you, that you by no means diſtrain* A. [228.] *Parſon of,* &c. *to yield any Toll or other Cuſtom of his eccleſiaſtical Goods ſold, or of others bought for his Suſtenance, contrary to the Cuſtom aforeſaid; and the Diſtreſs, if any,* &c. (as above).

By which Writs it appeareth how ſpiritual Perſons ſhall be diſcharged of A thoſe Tolls, and Impoſitions and Exactions for their Goods which they ſell or buy for their Suſtenance, *&c.*

Tenants of Ancient Demeſne by the Cuſtom of the Realm ought to be quit of Toll, *&c.* in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may ſue to have Letters Patent under the King's Seal, to all the King's Officers, and to Mayors, Bailiffs, *&c.* and the Form of the Patent is ſuch:

The King to all Bailiffs and Miniſters whereſoever appointed within our Realm of England, *greeting: Whereas according to the Cuſtom,* &c. (as above, till) *throughout our whole Realm; We command you, that you by no means diſtrain the Men of our Manor of* S. *(if that Manor be of the Ancient Demeſne of the Crown of* England) *to yield Toll to you,* &c. *according to the ſaid Cuſtom; and the Diſtreſs, (if any)* &c. *In Witneſs whereof,* &c. *Witneſs,* &c.

And alſo the Tenants of Ancient Demeſne may have a Writ directed to the Bailiffs or Mayor, or others who will compel them to pay Toll, that they ſuffer them to go quit, *&c.* and the Form of the Writ is ſuch:

The King to his Bailiffs A. *&c. of* I. *greeting: Whereas according to the Cuſtom of our Realm hitherto obtaining and approved, the Men and Tenants of the Ancient Demeſne of the Crown of* England *are and ought to be quit of yielding Toll throughout our whole Realm; nevertheleſs you grievouſly diſtrain the Men and Tenants of the Manor of* S. *which is of the Ancient Demeſne of the Crown of* England, *as it is ſaid, to yield Toll to you of their Goods and Things in the ſaid Town, and many ways unjuſtly diſquiet them upon that Occaſion, to the great Damage of them the ſaid Men and Tenants, and contrary to the Cuſtom aforeſaid, as we have received Information from their Complaint; And we willing that no Injury be done to thoſe Men and Tenants, command you, that (if it be ſo) then deſiſting for the time to come from bringing ſuch Diſtreſſes and Diſquietudes upon the ſaid Men and Tenants on that Occaſion, you permit them to be quit of yielding ſuch Toll to you of their Goods and Things aforeſaid in the ſame Town, according to the Cuſtom aforeſaid, and the Diſtreſs; if any,* &c.

And by the Writ aforeſaid it doth appear, that Tenants in Ancient Demeſne ſhall be quitted of Toll, as well thoſe Tenants who hold of the Manor which is Ancient Demeſne, which is in the Seiſin or the Poſſeſſion of another Man, than of the King, as the Tenants of Ancient Demeſne, which hold of the Manor in Ancient Demeſne, which is in the King's Hands and Poſſeſſion.

And it appeareth alſo, that they ſhall be quit of Toll for their Goods and Chattels which they merchandize with others, as well as for their other Goods; for the Writ is general, *pro bonis & rebus ſuis.*

B And it appeareth that that Writ may be ſued by all the Tenants, as a Writ of *Monſtraverunt* ſhall be ſued; and alſo that every particular Perſon who is grieved may ſue forth the Writ, if he will.

And alſo the Lord (*a*) in Ancient Demeſne himſelf ſhall be as well acquitted of Toll throughout the Realm, as the Tenants in Ancient Demeſne ſhall be; and that appeareth by the Regiſter, of an Attachment ſued by the Lord of the Manor in Ancient Demeſne againſt the Bailiffs of *C.* becauſe they took Toll of him. And they ſhall not be only quit of Toll, but alſo of Pontage, Paſſage, and the like.

C And alſo they ſhall not be contributory to the Expences of the Knights in Parliament; and if the Sheriff will diſtrain them, or any of them, to be contributary for their Lands in Ancient Demeſne, then they may ſue forth a Writ directed to the Sheriff, that he do not compel them to be contributary to the Expences of the Knights, *&c.* Commanding them in the ſame Writ, that if they do diſtrain them, or any of them, that they re-deliver the Diſtreſs, *&c.* And the Writ may be ſued by all together, as a *Monſtraverunt* ſhall be directed unto the Sheriff, or by any of them who are diſtrained.

D And Tenants at Will within Ancient Demeſne ſhall be diſcharged of Toll, as well as the free Tenants, or Tenants for Term of Life, or for Term of Years of Lands in Ancient Demeſne, ſhall be diſcharged of Toll for their Goods, *&c.* 9 *H.* 6. 14.

E And (*b*) ſee 7 *H.* 4. that a Tenant in Ancient Demeſne may merchandize, buy and ſell, and ſhall not pay Toll: And the ſame agreeth with the Regiſter. But *T.* 9 *H.* 6. it is holden, that they ſhall not pay Toll of Things coming of their Tenements within Ancient Demeſne, nor for Things bought for their Su-

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(*a*) *Note*; It does not appear by this Writ, what was Ancient Demeſne. See *Regiſter* 260. accordant, *N. B.* 2 *Lutw.* 1145, 1146.

(*b*) The Caſe, 7 *H.* 4. 44. In Treſpaſs againſt *A. Quod Telonium aſportavit, & illud ſolvere recuſavit,* (it was held that the Writ was good, and the firſt Words as to the *Aſportavit* void): The Plaintiff counts, that the Defendant had bought twelve Beaſts in his Market, and that he came the next Market in the next Week, and ſold ſix of the Beaſts (Oxen) and the other ſix at a Fair there held at the Feaſt of, *&c.* Defendant pleads that he is a Tenant of Ancient Demeſne, *&c.* and that all thoſe Tenants have been free to buy and ſell Beaſts for manuring their Lands, *&c.* without Toll, *&c.* Time out of Mind, and that he bought *ut ſupra,* and ſome he uſed for manuring his Land, and ſome he put to Paſture to make Graſes, and after convenient Time ſold them, *&c.* The Plaintiff offers to aver, that he bought the Beaſts to re-ſell them, and that he re-ſold them *ut ſupra*; the Defendant demurs; but the Opinion of the Court being againſt him, he became Nonſuit: So that it ſeems for Things bought for their Suſtenance, or manuring their Lands, or concerning Huſbandry, they are diſcharged, but not to merchandize; and the Merchandize of theſe is different from other Merchandize. See 9 *H.* 6. 15 and 66. 3 *Ed.* 3. (*Toll*) 138.

See Goods of the Vendor diſtrained for Toll. 20 *Ed.* 3. *Avowry* 129. See 9 *H.* 6. 45.

19 H. 6. 66. Newton. ſtenance, *&c.* but for other Things it is a Queſtion: But foraſmuch as they ſhall be quit of Pontage, Murage and Paſſage, I conceive that they ſhall be quit of Toll generally, although they do merchandize with their Goods. And the Toll ought always to be paid by the Buyer, and not by the Seller: If it be not by ſome ſpecial Cuſtom, *&c.*

And the Villains of Lords who come to Parliament ſhall not be Contributaries to the Expences of the Knights of the Counties who come to the Parliament; but the Lords ſhall have Letters in their own Names directed to the Sheriff, commanding him that he do not diſtrain their Villains to be contributary to thoſe Expences of the Knights, and if he hath diſtrained them, to deliver the ſame to the ſaid Villains. F [229.]

And it ſeemeth reaſonable that the Villain may, if he will, ſue the Writ, as well as the Lord, *&c.* which Writs do appear amongſt the Writs to be quit of Toll.

And alſo Chaplains who are Maſters of the Chancery, who are Attendants at Parliaments, ſhall not be contributary by reaſon of their Benefices unto the Expences of Proctors made for the Clergy who come to the Parliament; and if they be, they ſhall have a Writ to the Archdeacon and his Officers, commanding them for to diſcharge them, and upon that they may have an *Alias* and a *Pluries*, and Attachment againſt them; and the Writ is ſuch: A

The King to the Archdeacon of Middleſex *and his Official, and to their Commiſſary, greeting: Whereas in our Parliament called together at* Weſtminſter *in the fourth Year of our Reign, it was there agreed by us, and by the Prelates, Earls, Barons, and our whole Council, that our beneficed Clerks of the Chancery perſonally attending in our Parliaments, Councils and Treaties, for the Service of us and the People of our Realm, are to be quit from contributing, by reaſon of their Benefices, towards the Expences of the Proctors of the Clergy of any Dioceſe, they coming by our Command to ſuch Parliaments, Councils and Treaties: We willing the ſaid Agreement to be kept inviolable in all Things, eſpecially with reſpect to paying towards the Expences aforeſaid, by reaſon of the Abſence of thoſe who were not at the ſaid Parliaments,* &c. *command you, that you by no means compel, or any wiſe permit to be compelled by your Miniſters,* T. *Parſon of the Church of* N. *in the Dioceſe of* London, *who is a Clerk of our Chancery, and who was preſent in our laſt Parliament held at* Weſtminſter, *in the Service of us and the Commons of our People, to contribute, by reaſon of his Benefice, to the ſaid Expences of Proctors who came to the ſaid Parliament for the Clergy of the ſaid Dioceſe, or of other Proctors who ſhall happen to come to other Parliaments,* &c. *by us now to be holden, while he ſhall attend ſuch Services, but cauſe him to be quit of ſuch Expences, according to the Agreement aboveſaid; and if any thing ſhall have been levied upon him on that Occaſion, reſtore it to him without Delay, and alſo cauſe the Proceſſes to be ſuperſeded (if any have been made towards eccleſiaſtical Cenſures againſt him for the Cauſe aforeſaid) and the Sentences to be revoked (if any have been fulminated out againſt him). Witneſs,* &c.

Quære for that Statute: And by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.

(a) *Writ* de Libertatibus allocandis.

B THE Writ *de Libertatibus allocandis* lieth, where any Citizen or Burgeſs, or other Man, is impleaded before the King's Juſtices, Juſtices Errant, or Juſtices of the Foreſt, and he claimeth and pleadeth any Grant of Liberty made unto him by the King, or unto any City or Borough whereof he is a Burgeſs, and the Juſtices do delay to allow that Liberty; then he who is ſo delayed by the ſaid Juſtices, may ſue forth ſuch Writ directed to the Juſtices, commanding them to allow the ſame; and the Writ is ſuch:

The King to his Juſtices of the Bench, greeting: Becauſe our Burgeſſes of N. *by the Charters of our Progenitors, ſome time Kings of* England, *claim to have divers Liberties which they and their Predeceſſors Burgeſſes of the ſame Town have always hitherto, from the time of the making of the ſaid Charters, uſed and en-*

(a) *De Libertatibus allocandis.*

Note; Liberties may be allowed in the Time of the King who granted them, without any Writ of Allowance. See 2 *H.* 5. 4. 34 *H.* 6. 54. For Allowance of Liberties, ſee 14 *H.* 6. 12.

If the King grants Conuſance of Pleas, or to be diſcharged from ſerving on Juries, &c. he ſhall have no Advantage of it without ſhewing it in Allowance. 39 *Ed.* 3. 15.

What Liberties the King may grant.

Regularly he cannot grant ſuch Liberties as are prejudicial to the Subject, without the Aſſent of Parliament: *Note* the Caſe of *John Marſhall*, *viz.* The King granted to one *J. S.* the Meaſuring of Cloths, Canvas, &c. bought and ſold in *L.* as well between others, as between Citizen and Citizen, for a certain Sum, &c. *J. S.* dies, the King grants the ſame Office to *J. M.* and a Writ iſſued to the Mayor and Sheriffs of *London* to receive him; and at the *Sicut alias* it was returned, that there was not any ſuch Office in the City, &c. and ſome for the King ſurmiſed the contrary; whereupon a *Pluries* and an Attachment iſſued, and on the Return the Matter aforeſaid was ſhewn to the Court, &c. And it was reſolved, 1. That foraſmuch as the ſaid Officer was a Charge to the Subject, for he took certain Fees from the People (where they had an Aulnager before) That as the firſt Grant was void, and that what he took was Extortion, and not as an Officer; ſo on the new Patent to *J. M.* the Mayor might well return that there was not any ſuch Office. *Ratio:* For if the Mayor and Sheriffs could not make ſuch Return, they would be eſtopped by their Admittance, to ſay it afterwards, although ſuch Admittance by the Mayor and Sheriffs ſhould not work any Prejudice to another. And ſo there is a Diverſity, when the Office granted by the King has an Intereſt or Charge, by reaſon of the Matter or Thing granted, there they may return the Matter, &c. although it goes in Bar of the King's Title; *contra* if the Officer hath nothing to do with the Matter, but only as Officer, without charging the Subject; and accordingly it was adjudged: And it was then ſaid by *Gaſcoign*, that the King may charge his People, without Aſſent of the Commons, in a Thing that is for the Good or Profit of the People; as he may grant Pontage, Murage or a Ferry; but if the King grants Murage to ſuch a Town, where I and my Tenants have Paſſage through the Town; though ſome of my Tenants pay the Cuſtom, yet I may forbid the extorting of it. 12 *H.* 4. 87. 13 *H.* 4. 14, 15. See the Office of Brocage not grantable by the King. 21 *Ed.* 4. 79. *Rot. Parl.* 13 *H.* 4. *m.* 43.

As to the King's Grant of Tolls, &c. *vide ante* 227. And *Note*; Every new Office ought to be proclaimed as well as granted. 13 *H* 4. 15. If the King grants to one to be quit of Eſcapes, this cannot be intended voluntary Eſcapes. 3 *H.* 7. — The King cannot by his Patent diſcharge one who is bound by Preſcription to make or repair a Bridge; but of Contribution to a Bridge he may diſcharge, *ut videtur.* *Quære* 3 *Ed.* 3. *Aſſ.* 445. but he may diſcharge a Fine for it. 37 *H.* 6. 4.

joyed, as they ſay; We command you, that you permit them the ſaid Burgeſſes, in the Bench before you, to uſe and enjoy the Liberties aforeſaid, according to the Tenor of the Charter aforeſaid, as they ought to uſe and enjoy them, and as they and their Predeceſſors have always, from the time aforeſaid, hitherto been accuſtomed reaſonably to uſe and enjoy thoſe Liberties. Witneſs, &c.

And if any do claim a ſpecial Liberty to be impleaded within the City or Borough, and not out of the City, then the Writ ſhall be ſpecial, thus:

The King to the ſame, greeting: Whereas amongſt other Liberties which for the Improvement of our Town of R. *are granted by the Charters of our Progenitors ſome time Kings of* England, *to the Burgeſſes of the ſame Town, it is granted to them, that they ſhall not implead or be impleaded any where elſe than within the ſaid Borough before*, &c. *of the ſame Town, touching any Tenures therein, or Treſpaſſes and Contracts committed or made within the ſame Borough, as in the Charters aforeſaid is more fully contained; which ſaid Liberty they the ſaid Burgeſſes and their Predeceſſors Burgeſſes of the ſame Town, from the time of making of the Charters aforeſaid always hitherto have reaſonably uſed, as they ſay: We command you, that you permit them the ſaid Burgeſſes before you to uſe and enjoy the Liberty aforeſaid, according to the Tenor of the Charters aforeſaid, as they ought to uſe them, and as they and their ſaid Predeceſſors from the time aforeſaid always hitherto have been accuſtomed to uſe and enjoy them. Witneſs*, &c.

And every one who claimeth any Liberty, and juſtifieth by the ſame any Act done by him in any Court before any Manner of Juſtice or Juſtices, and the Juſtices will not allow that Liberty, or delay to allow the ſame, then he [230.] may ſue forth that Writ. And thoſe Writs are of ſeveral Forms, as appeareth by the Regiſter, and may be ſued by a Body Corporate or by a ſingle Perſon, as the Caſe ſhall happen, *&c.* And the Barons of the Cinque Ports may ſue forth ſuch Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be ſued to the Juſtices of the Foreſt, commanding them to allow Charters granted to any Perſons, to have Paſture, or to be quit of Pannage there.

Writ de Corrodio habendo.

A THE Writ *de Corrodio habendo* lieth, where the King is the Founder in the
Right of his Crown of any Abbey (*a*) or Priory, or other religious
Houſe. Now of common Right the King ought to have a Corrody, and a
reaſonable Allowance for any of his Vadelets in the ſame Houſe. And ſo of
every Biſhoprick in *England* and *Wales*, the King ought to have a reaſonable
Penſion for his Chaplain, until the (*b*) Biſhop have promoted him to a con-
B venient Benefice. And the Form of the Writ for the Corrody is ſuch:
10 *H.* 4. 6.

1 Ed. 4. 10. So every common Perſon, if he be Founder, and doth not give in Frankalmoigne: 44 Ed. 3. 24. and 50 Aſſ. 6.

Vide 21 Ed. 4. 8. That the King writ for his Vadelet by his Prerogative, by which Br. collects, that a Founder, common Perſon, ſhall not have a Corrody.

14 H. 6. 11. If the King found a Frank-chapel, he ſhall not have a Corrody nor Penſion.

The King to his beloved in Chriſt the Prior and Convent of N. *greeting: We, willing that for our beloved Valet of* S. *fit Corrody be provided for him, have commanded him to be ſent to you, requiring that, admitting him the ſaid* S. *into your ſaid Houſe, ſuch Corrody be adminiſtred to him in all Things, as* P. *now deceaſed had while he lived in the ſame, and cauſe to be made and delivered to him upon this Occaſion your Letters ſigned with the common Seal of your Houſe, making mention of thoſe Things which he ſhall ſo receive in your ſame Houſe, for doing which for us we will be eſpecially bound to your Houſe for the future; and what you ſhall order to be done upon this our Requeſt write back again to us by the Bearer of theſe Preſents. Witneſs*, &c.

1 Ed. 4. 10. The Writ ought to contain the King's Title to the Corrody.

There is another Form of Writ, where the King will write for the Servants of his Grandfather or Father, thus:

The King to the ſame: We regarding the acceptable and laudable Services which our beloved Servant A. *hath hitherto done to our Grandfather and us, willing for him the ſaid* A. *(who is not yet provided for of his Maintenance by them our Grandfather or Father, or by us) to provide ſuch Support as we are bounden, have commanded him to be ordered to you, requiring that, admitting him the ſaid* A. *into your ſaid Houſe, you adminiſter to him ſuch (Corrody or) Support, both in Victuals and Cloathing and other Neceſſaries, as* R. *lately deceaſed had by the Command of our Grandfather, to be perceived in your ſaid Houſe, and cauſe to be made and delivered to him on this Occaſion your Letters Patents*, &c. (as above).

(*a*) It ſeems, if the King founds an Abbey to hold of an Honour, he ſhall not have a Corrody. *Quære* 24 *Ed.* 3. 72.

(*b*) This is due from every Biſhop of common Right, and cannot be diſcharged by Preſcription. 9 *Ed.* 4. 40, &c. There the Biſhop of St. *David*'s was charged, that he had alledged, 1. That it was of the Foundation of the Prince of *Wales*, and that the Avoidance belonged to the Principality; whereto it was anſwered, that before the Conqueſt that Principality was held of the King as of his Crown; and by Forfeiture of the Prince of *Wales* became re-annexed to the Crown, with all Patronages of the Biſhoprick. 2. That although the Principality was given to the Prince, yet for that the Biſhop had ſued the Temporalties out of the King's Hands in Chancery, he was chargeable to the King. 10*H.* 4. 6.

See a Corrody for a Feme in the Priory of *Bermondſey*. *Lib. Parl. Ed.* 1. 193.

And

C And ſo where the King is Founder of any Abbey or Priory of Nuns, the King ſhall have a Corrody for the Queen's Maidens, or others of her Couſins, for whom he pleaſeth for to write, *&c.* But if the King will write unto an Abbey of Monks, for a Maiden to have a Corrody there for her Suſtenance, *&c.* it ſeems the ſame ſhall not be obeyed, for the Inconveniency thereof; nor contrary, if he write to a Nunnery for his Vadelet to have a Corrody there: *Tamen quære.*

Note; If an Abbey which a common Perſon hath cometh to the King by Eſcheat; yet he ſhall not have a Corrody, becauſe it is not of his Foundation. L. 5 Ed. 5. 118. Br. Corrod. 1. 6. Yet the King may have a Corrody where he is not Founder, but that is by ſpecial Grant. 1 Ed. 4. 10.

38 Ed. 3. Br. Contemp. 5. and 39 H. 6. 48. If the Abbot will not admit the King's Vadelet, he who ought to be admitted ſhall recover Damages, and not the King, for that the King hath only the Preſentation to the Corrody, and the Party the Damages.

44 Ed. 3. 25. per Knevit, if the King and another give Land to erect, &c. the King is Founder.

There is another Form of Writ, thus: D

The King to his beloved and faithful the Abbot and Convent of B. *greeting: We willing of our ſpecial Favour for our beloved Valet* R. *by reaſon of his good Service to us done and to be done, for whom fitting Support is not yet,* &c. as above.

E (a) And upon theſe Writs, if the Abbot or Prior will not do according as he is directed to do by the Writ, an *Alias* and a *Pluries* ſhall be awarded, *or ſignify the Cauſe to us* ſhall be in the Writ of *Pluries*, and ſhall be returned unto the King's Bench; and if he do not return the ſame, an Attachment ſhall be awarded againſt the Abbot, Prior or Prioreſs.

And if the King write for ſuch Corrody unto an Abbey or Priory, and they grant Parcel of the Corrody unto him for whom the King writeth, but not all, nor ſo much as others had before; then the King, upon a Surmiſe thereof made in the Chancery, ſhall grant a Writ of *Sicut alias* directed unto the ſaid Abbot or Prior, *&c.* deſiring them that they grant the like Livelihood in all Things as any other hath had before in the ſame Houſe. And if the Abbot or Prior upon the *Plurie̊s* return any Matter of Excuſe, wherefore he ought not to grant ſuch Corrody, which Return ſeemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no ſufficient Return, then the King ſhall grant ſuch Writ:

22 Ed. 4. 17, 18, 19. Huſſey and Fairfax. If an Abbot grant to *A.* to have a Corrody, nihil operatur by the Grant: But if he grant a Corrody, or ſo much Bread and Ale, &c. it is a good Grant of thoſe Things, but it is no Corrody, but a Profit; for every Corrody hath his Beginning by the Founderſhip.

The King, &c. *greeting: Whereas we being lately willing to provide for our beloved* N. *of a fit Support, by reaſon of his long Service to Lord* Edward *lately King, our Grandfather, and to us done, ſent him to you, and have oftentimes commanded you, requiring that you ſhould admit him the ſaid* N. *into your Houſe, and grant to him ſuch Support,* &c. *and ſhould make your Letters,* &c. *or ſhould ſignify*

(a) If the Abbot returns Cauſe at the *Sicut alias*, and none comes on the King's Part to counterplead the Cauſe, the Abbot ſhall be diſcharged. 11 *H.* 4. 81. But if any comes for the King, and counterpleads the Cauſe, they ſhall not interplead thereon, but a *Pluries* and an Attachment ſhall iſſue, and on the Attachment they ſhall plead, by *Gaſcoign.* 11 *H.* 4. 87.

Note; It was *Venire coram Concilio*, and there the Title of the Patronage was in Iſſue, and found for the King; and adjudged, that the King ſhould recover the Patronage, and the Temporalties be ſeized, for that they elected the Prior without the King's Leave, *&c.* 38 *Aſſ.* 22. *Vide poſt.* 231. B.

the Cauſe to us wherefore you have not obeyed our Commands ſo often directed to you thereupon, and you have ſent to us in our Chancery certain Cauſes of Excuſe, which we think inſufficient; Therefore we command you, firmly injoining that you admit the ſame N. *into your Houſe*, &c.

F And if an Abbot or Prior at the King's Requeſt do grant a Corrody to *B.* for Life, and afterwards *B.* will ſurrender the Grant of his Corrody unto the [231.] Abbot or Prior, to the Intent that *C.* have the ſame for his Life, then he ought for to ſue a Writ to the Abbot or Prior, thus:

The King to his beloved, &c. *the Prior and Convent of* R. *greeting: Whereas our beloved* S. *at our Requeſt obtained a certain Corrody in your ſaid Priory, and is willing that our beloved Valet* N. *may have the whole Eſtate which the ſame* S. *hath in the Corrody aforeſaid, and for that Purpoſe* S. *is ready to ſurrender to you the Letters Patents by you made to him of the ſaid Corrody, as he ſays, beſeeching us that we will vouchſafe to yield our Aſſent hereunto; We regarding the Prayer of him the ſaid* S. *and moreover being willing to do the ſaid* N. *a more abundant Favour in this Matter, command you, requiring that if the ſaid* S. *is willing to ſurrender the ſaid Letters to the Purpoſe aforeſaid, then having received thoſe Letters into your Power, admitting him the ſaid* N. *into your ſaid Houſe, grant to him to perceive of your ſaid Houſe the ſaid Corrody for the whole Life of him the ſaid* N. *and cauſe to be made and delivered to him your Letters Patent for the ſaid Corrody under the Seal of your ſaid Houſe; and what you ſhall order to be done at this our Requeſt, write back again to us by the Bearer of theſe Preſents. Witneſs*, &c.

19 Ed. 3. Fines 50. A Fine was levied of a Corrody. 10 Aſſ. 11. Br. Corrod. 8.

Nuper obiit of a Corrody, and Dec' de libero Tenem', quod vide 14 H. 6. 11 and 12. Aſſiſe lieth of a Corrody, contrary of a Penſion.

A And upon that he ſhall have an *Alias* and a *Pluries*, and Attachment, if need be.

B And if an Abbot or a Prior admit one to a Corrody upon the King's Writ ſent him, if he dieth who is ſo admitted, the King may write for another to have the ſame Corrody. 14 H. 6. 11, 12.

But if the King have a Penſion in any Abbey or Priory for his Chaplain, if the Abbot or Prior upon the King's Letter grant a Penſion to his Chaplain, and the Chaplain dieth, the King cannot write for, or grant a new Penſion unto another Chaplain during the ſaid King's Life; and if he do, the Prior is not bound to grant the ſame; but it is otherwiſe of a Corrody. 14 H. 6. 11. 14 H. 6. 11 and 12.

And yet ſome ſay, that upon the Ceſſion of an Abbot or Prior, the King ſhall have a new Penſion granted to his Chaplain; but *quære* of that. 14 H. 6. 12.

C And if the King have a Corrody in an Abbey or Priory to have certain Bread and certain Gallons of Beer, *&c.* the King may grant the ſame to ſeveral Men; but where he hath a Corrody to have Livelihood of one Man, to ſit with the Servants of the Abbot, there he cannot grant the ſame but to one D Man only. And the King may releaſe to the Abbot or Prior his Title to the Corrody, if he will. 8 Ed. 4. 17. ac. 14 H. 6. 11 and 12. 8 H. 7. 12. 24 Ed. 3. 33. 15 Ed. 3. and 14 Ed. 3. and 24 Ed. 3. 33. 14 Ed. 3. Corrody 7 and 4. and Corrody 4 and 5. Co. Lit. 97. a. 50 Aſſ. 6. 44 Ed. 3. 24. ac.

(*a*) And if the Abbot or Prior do receive one to a Corrody upon the King's E
Letter, and thereupon doth make him a Grant thereof; thereby the Abbot or Prior and their Succeſſors ſhall be bound for ever. Otherwiſe it ſeemeth, if the Abbot had granted the ſame upon the King's Requeſt.

And *T.* 4 *Ed.* 3. it is holden, that the Abbot or Prior who holdeth of the F
King in *Frankalmoigne* ſhall not be chargeable with any Corrody.

Writ de Annua Penſione.

AND when the King hath a yearly Penſion out of an Abbey or Priory for G
his Chaplain, the King ſhall ſend his Writ unto the Abbot or Prior, *&c.* to grant the ſaid Penſion to his Chaplain; and the Writ ſhall be ſuch:

The King to his beloved in Chriſt the Abbot and Convent of C. *greeting: Whereas you by reaſon of your Creation of the ſaid Abbey are bounden to one of our Clerks (whom we ſhall be moved to name) in a certain yearly Penſion to be received of your Houſe, until he ſhall be provided of a competent eccleſiaſtical Benefice; and we deſiring the Promotion of our beloved Clerk* A. *(from his Merits requiring it) are moved to name him to receive ſuch Penſion of you; Therefore we command you, that you grant to him the ſaid* A. *ſuch Penſion to be received of your Houſe in Form aforeſaid, as may become the Givers, and may render the Receiver more ſtrongly obliged, hereupon cauſing to be made and given to him the ſaid* A. *your Letters ſigned with the Seal of your Chapter; and what you ſhall be induced to do thereupon, write back again to us without Delay. Witneſs,* &c.

And the Form of the Grant of the Penſion is ſuch: H

To all to whom theſe preſent Letters ſhall come the Abbot of T. *and the Convent of the ſame Place ſend greeting,* &c. *Know ye that we, at the Inſtance of the moſt illuſtrious Prince* Edward *by the Grace of God King of* England, *have given and granted to our beloved in Chriſt* A. *Clerk, one hundred Shillings Sterling, to be received of our Chamber in the Feaſt of Saint* Michael *yearly, until we ſhall have provided for the ſame* A. *a competent eccleſiaſtical Benefice for him, and this we promiſe to do for him as ſoon as an Opportunity ſhall offer itſelf; but the ſaid* A. *by himſelf, or his Proctor lawfully appointed for this Purpoſe, may receive the ſaid one hundred Shillings every Year at* S. *In Witneſs,* &c. *we have commanded the common Seal of our Houſe to be put. Dated in our Chapter,* &c.

And it appeareth by an ancient Roll in the Exchequer, of what Abbies or Priories the King ought to have a Corrody and Penſion, and of what a Penſion only, and of what a Corrody only; the Copy of which followeth:

(*a*) See 18 *Ed.* 3. 2. *In libera Capella Regis,* although the King had before tranſlated it to the Priory and Convent. 14 *H.* 6. 12. for the Priory of Saint *Bartholomew.*

The Names of the Corrodies and Penſions in England *which are of the King's Gift, according to the Book in the Exchequer.*

IN the Abbey of *Glaſſenbury*,	1 *C.*	1 *P.*
In the Abbey of *Mochelny*,	2 *C.*	1 *P.*
In the Abbey of *Tewkſbury*,	1 *C.*	
In the Abbey of *Clive*,	1 *C.*	1 *P.*
In the Abbey of *Ford*,	1 *C.*	
In the Abbey of *Buckfaſt*,	1 *C.*	
In the Abbey of *Sherburn*,	1 *C.*	1 *P.*
In the Abbey of *Abbatſbury*,	1 *C.*	1 *P.*
In the Abbey of *Bewdley*,	1 *C.*	1 *P.*
In the Abbey of *Shaftſbury*,		1 *P.*
In the Abbey of *Winton*,	1 *C.*	1 *P.*
In the Abbey of *Worwel*,		1 *P.*
In the Abbey of *Hide*,	1 *C.*	1 *P.*
In the Abbey of *Battel*,	1 *C.*	1 *P.*
In the Abbey of *Waverly*,	1 *C.*	
In the Abbey of *Malmſbury*,	2 *C.*	1 *P.*
In the Abbey of *Sleveburn*,		1 *P.*
In the Abbey of *Southwick*,	1 *C.*	1 *P.*
In the Abbey of *Suſeſter*,	2 *C.*	1 *P.*
In the Abbey of *Stonley*,	1 *C.*	
In the Abbey of *Briſtokom*,		1 *P.*
In the Abbey of *Hurtey*,	1 *C.*	
In the Abbey of *Reading*,	1 *C.*	1 *P.*
In the Abbey of *Meſſenden*,	1 *C.*	
In the Abbey of *Gloceſter*,	2 *C.*	1 *P.*
In the Abbey of *Langton*,		1 *P.*
In the Abbey of *Perſhore*,	1 *C.*	1 *P.*
In the Abbey of *Winchcomb*,	1 *C.*	1 *P.*
In the Abbey of *Oſney*,	1 *C.*	1 *P.*
In the Abbey of *Tame*,	1 *C.*	
In the Abbey of *Dorceſter*,	1 *C.*	1 *P.*
In the Abbey of *Abingdon*,	2 *C.*	1 *P.*
In the Abbey of *Eveſham*,	1 *C.*	1 *P.*
In the Abbey of *Godſtow*,		1 *P.*
In the Abbey of *Notley*,	1 *C.*	
In the Abbey of *Southampt.*	1 *C.*	1 *P.*
In the Abbey of *Lilſil*,	1 *C.*	
In the Abbey of *Shrewſbury*,	1 *C.*	1 *P.*
In the Abbey of *Cheſter*,	1 *C.*	1 *P.*
In the Abbey of *Vale Royal*,	1 *C.*	
In the Abbey of *Burton*,	1 *C.*	1 *P.*
In the Abbey of *Thorney*,	1 *C.*	1 *P.*
In the Abbey of *Ramſey*,	1 *C.*	1 *P.*
In the Abbey of *Peterborough*, [232.]	1 *C.*	1 *P.*
In the Abbey of *Crowland*,	1 *C.*	1 *P.*
In the Abbey of St. *Benedict* in *Norfolk*,	1 *C.*	1 *P.*
In the Abbey of *Bury*,	1 *C.*	1 *P.*
In the Abbey of *Tetſurth*,	1 *C.*	1 *P.*
In the Abbey of *Pipwel*,	1 *C.*	1 *P.*
In the Abbey of *Leiceſt.*	1 *C.*	
In the Abbey of *Newſted*,	1 *C.*	
In the Abbey of *Pomfret*,	1 *C.*	1 *P.*
In the Abbey of *Worſtore*,	1 *C.*	
In the Abbey of *Blith*,	1 *C.*	
In the Abbey of *Waltham*,	2 *C.*	1 *P.*
In the Abbey of *Barking*,	1 *C.*	
In the Abbey of *Tower-hill*,	1 *C.*	
In the Abbey of *Bermondſey*,	1 *C.*	
In the Abbey of *Chriſtchurchland*,	1 *C.*	1 *P.*
In the Abbey of *Feverſham*,	1 *C.*	
In the Abbey of *Chirſey*,	1 *C.*	
In the Abbey of St. *Mary* in *York*,	1 *C.*	
In the Abbey of *Durham*,	1 *C.*	1 *P.*
In the Abbey of *Tinmouth*,		1 *P.*
In the Abbey of *Withy*,	1 *C.*	1 *P.*
In the Abbey of *Mewes*,	1 *C.*	
In the Abbey of *Altney*,	1 *C.*	1 *P.*
In the Abbey of *Wardox*,	1 *C.*	
In the Abbey of *Criſton*,	1 *C.*	
In the Abbey of *Selby*,	1 *C.*	
In the Abbey of *Sparhail*,	1 *C.*	
In the Abbey of *Dorſley*,	1 *C.*	
In the Abbey of *Spalding*,	1 *C.*	
In the Abbey of St. *Auguſtine* in *Canterbury*,	1 *C.*	1 *P.*
In the Abbey of *Thornton*,	1 *C.*	1 *P.*
In the Abbey of *Twierdart*,	1 *C.*	
In the Abbey of *Noveyton*,		1 *P.*
In the Abbey of *Coteſhall*,	1 *C.*	
In the Abbey of *Monmouth*,	1 *C.*	
In the Abbey of *Weſtminſter*,		1 *P.*

In the Abbey of St. *Saviour*'s in *Canterbury*,	1 *C.* 1 *P.*
In the Abbey of *Daventry*,	1 *C.*
In the Abbey of *Criſtal*,	1 *C.*
In the Abbey of *Stratford*,	1 *C.*
In the Abbey of *Milton*,	2 *C.*
In the Abbey of *Serne*,	1 *C.* 1 *P.*
In the Abbey of *Combe*,	1 *C.*
In the Abbey of *Grenuby*,	1 *P.*
In the Abbey of *Merival*,	1 *C.* 1 *P.*
In the Priory of *Bath*,	1 *C.*
In the Priory of *Montagu*,	1 *C.*
In the Priory of *Taveſtock*,	1 *C.*
In the Priory of St. *Auguſtin* in *Briſtol*,	2 *C.* 1 *P.*
In the Priory of *Almſbury*,	1 *C.*
In the Priory of *Stethorne*,	1 *C.*
In the Priory of *Bradſtow*,	1 *P.*
In the Priory of *Worceſter*,	1 *C.*
In the Priory of *Sedſworth*,	1 *C.* 1 *P.*
In the Priory of *Dunſtable*,	1 *C.* 1 *P.*
In the Priory of *Royſton*,	1 *C.*
In the Abbey of *Kennelworth*,	1 *C.* 1 *P.*
In the Priory of *Coventry*,	1 *C.*
In the Priory of *Tutbury*,	1 *C.*
In the Priory of *Ely*,	1 *C.*
In the Priory of *Bedwell*,	1 *C.*
In the Priory of *Norwich*,	1 *C.* 1 *P.*
In the Priory of *Lenton*,	1 *P.*
In the Priory of *Seſword*,	1 *C.*
In the Priory of *Merton*,	1 *C.* 1 *P.*
In the Priory of *Lewes*,	1 *C.*
In the Priory of *Wenlock*,	1 *C.*
In the Priory of *Wincheſter*,	1 *C.* 1 *P.*
In the Priory of *Bordſly*,	1 *C.*
In the Priory of *Standeate*,	1 *C.*
In the Priory of St. *Andrews* in *Northampton*,	1 *C.* 1 *P.*
In the Abbey of *Bodmyn* in *Cornwall*,	1 *C.*
In the Abbey of St. *James*'s in *Northampton*,	1 *C.* 1 *P.*

Writ de Idiota inquirendo & examinando.

Vide 256. D. NOTE, That the King by the Law, of Right, is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every Man may do to him as againſt the King's Enemy, and he hath no Remedy for the ſame by the King's Laws. (*a*) And becauſe that every Man is within the King's Protection, an Idiot, who cannot defend or govern himſelf, nor order his Lands, Tenements, Goods nor Chattels, the King of Right ought for to have him in his Cuſtody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis*, *cap.* 8. A

Staundf. 34. 18 Ed. 3. Sci. fac. 10. And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his Birth, the King may award his Writ to the Eſcheator of the County where ſuch Idiot is, or unto the Sheriff, to inquire thereof; and the Writ which ſhall be directed to the Eſcheator ſhall be ſuch: B

(*a*) *Note*; If only a Right of Entry or Action deſcends to an Idiot, the King ſhall not have the Cuſtody thereof. 1 *H.* 7. 24. 29 *Ed.* 3. 43. Alſo the Copyhold of an Idiot is not within the Ordering of the Court of Wards, but the Court of the Manor. *Dyer* 302.

Note; The King has the Cuſtody of an Idiot to his own Uſe, not ſo of a *Lunatick*; therefore his Committee ſhall not have Aid of the King. *Dyer* 25.

The King to his Eſcheator, &c. *greeting: Becauſe we have received Information that* I. *of* B. *is fooliſh and an Idiot, ſo that he is not ſufficiently able to govern himſelf, his Lands, Tenements, Goods and Chattels, and that he in his Fooliſhneſs hath aliened a great Part of his Lands and Tenements, and alſo hath waſted a great Part of his Goods and Chattels, to his own Diſheriſon and our manifeſt Prejudice; We being willing to take care for the Indemnity of him the ſaid* I. *in this* [233.] *Behalf, command you, that you go to him the ſaid* I. *in your own Perſon, and circumſpectly examine him by ſuch Ways and Means touching his Condition, as you may beſt be informed; and nevertheleſs diligently inquire by the Oath of honeſt and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, whether the ſaid* I. *be fooliſh and an Idiot, as is before ſaid, or not; and if he be, then whether from his Nativity, or from any other Time, and if from any other Time, then from what Time, and how and in what Manner, and if he enjoys lucid Intervals; and whether he the ſaid* I. *being in ſuch Condition, aliened any Lands or Tenements or not, and if ſo, then what Lands and what Tenements, and where, and* (*a*) *to whom or what Perſons, and in whoſe or what Perſons Hands the Lands and Tenements ſo aliened are, and how and in what Manner, and what Lands and what Tenements ſo yet remain, and of whom or of what Perſons as well the Lands and Tenements ſo aliened, as the Lands and Tenements retained to himſelf are holden, and by what Services, and how and in what Manner, and how much they are worth by the Year in all Iſſues, and who is his next Heir and of what Age: And the Inquiſition thereof diſtinctly and openly made, ſend to us in our Chancery under your Seal and the Seals of thoſe by whom*, &c. *and this Writ. Witneſs*, &c.

A And there are two other Manners of Writs of another Form in the Regiſter, which are directed unto the Eſcheator, to go to ſuch Idiot, and to examine him, and to inquire thereupon. And the Form of the Writ which is directed unto the Sheriff for to inquire of an Idiot, is ſuch:

The King to the Sheriff, &c. *We command you, that by the Oath*, &c. *you diligently inquire whether* I. *of* B. *the Brother and Heir of* T. *of* B *was a perfect Idiot from the Time of his Nativity always hitherto, by which the Cuſtody of his Lands and Tenements in* C. *ought to belong to us, or fell by Misfortune or other Manner into ſuch Infirmity afterwards, for which ſuch Cuſtody ought not to belong to us; and if by Misfortune or other Means, then by what Misfortune, and how and in what Manner, and of what Age he was, and of whom the Lands and Tenements are immediately holden, and by what Services, and who now holds them, and how much they are worth by the Year in all Iſſues, and who in the mean time hath received the Iſſues thereof, and the Inquiſition thereof diſtinctly and openly*, &c.

And there is a Form of Writ directed to the Sheriff for to inquire of Idiots, which is much of the like Form as the firſt Writ above is; and it is directed to the Eſcheator to make the Inquiry.

And although a Man be found Idiot by Inquiſition taken before the Eſcheator, or before the Sheriff, and by their Examination, *&c.* and that be returned into the Chancery; yet he who is ſo found Idiot may in Perſon, or by

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(*a*) And a *Scire facias* ſhall iſſue againſt them. 18 *Ed.* 3. *Scire facias* 10. 32 *Ed.* 3. *ibid.* 106.

his Friends, come into the Chancery before the Chancellor and the King's Council, and ſhew the Matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not; or he may ſue forth a Writ out of the Chancery to certain Perſons, to bring him who is ſo found Idiot before the King and his Council to *Weſtminſter*, to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquiſition found before the Eſcheator or Sheriff, and alſo the Examination which the Sheriff hath made, and returned thereupon, ſhall be of no Effect, but the ſame Office ſhall be taken as void, without any other Traverſe, as it ſeemeth. And the Writ which ſhall be directed to the Party to bring the Idiot before the King's Council, ſhall be ſuch:

16 Ed. 3. Livery 30. *The King to* I. *of* T. *greeting: Becauſe we are given to underſtand, that* R. *your Brother, the Son and Heir of* B. *deceaſed your Father, is an Idiot, and is not of ſound Mind, ſo that he is not ſufficient to take care for the Government of himſelf or his Lands; We being willing to be certified of the Condition of the ſaid* R. *your Brother, command you, firmly injoining that forthwith, upon Sight of theſe Preſents, the ſaid* R. *being in your Cuſtody, as it is ſaid, without Delay you cauſe him to be brought before us and our Council at* Weſtminſter, *ſo that he may be there upon this inſtant* Thurſday, *there to be examined before our ſame Council, and to do thereupon that which upon the Advice of our Council we ſhall command to be ordained upon this Matter. And this you are in no wiſe to omit under the Pain of one hundred Pounds. Witneſs*, &c.

And he who ſhall be ſaid to be a Sot and Idiot from his Birth, is ſuch a Perſon who cannot account or number twenty Pence, nor can tell who was his Father or Mother, nor how old he is, *&c.* ſo as it may appear that he hath no Underſtanding of Reaſon what ſhall be for his Profit, or what for his Loſs: But if he hath ſuch Underſtanding, that he know and underſtand his Letters, and do read by Teaching or Information of another Man, then it ſeemeth he is not a Sot nor a natural Idiot. B

Writ de Apoſtata capiend'.

THE Writ (*a*) *de Apoſtata capiend'* lieth, where a Man doth enter into Religion, and is profeſſed, and afterwards he leaveth his Houſe, and is Vagrant, and running about the Country, againſt the Rules of his Order of Religion; then the Abbot or Prior where he is profeſſed may certify the ſame under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Attorney; and the Form is ſuch:

The King to the Sheriff, &c. *greeting: Becauſe Frier* I. *Canon of* A. *deſpiſing the Habit of that Order, is Vagrant, and runs up and down from Country to Country in your Bailiwick in a ſecular Habit, to the Peril of his Soul, and the manifeſt Scandal of his Order, as our beloved Abbot of* A. *hath ſignified unto us by his Letters Patent: We command you, that you Arreſt the aforeſaid* I. *whereſoever he ſhall happen to be found in your Bailiwick, and deliver him to the ſaid Abbot, or to his Attorney in this Behalf, to be chaſtiſed according to the Rule of the Order aforeſaid. Witneſs*, &c. [234.]

A And upon that he may have an *Alias* and *Pluries* againſt the Sheriff, and an Attachment, if he will not execute the Writ.

B There is another Writ of another Form thus:

The King to the ſame, &c. *greeting: Becauſe Frier* T. *of the* S. *Order of* Clune, *profeſſed in that Order, deſpiſing the Habit of that Order*, &c. *as our beloved in Chriſt the Abbot of* B. *by his Letters Patent hath ſignified to us: We command you, that*, &c. (as above)

C And it ſeemeth, that although he who departeth from his Houſe or Religion doth not change his Habit, yet if he be Vagrant, *&c.* and the Abbot of the Houſe do certify the ſame, he ſhall have ſuch Writ, notwithſtanding theſe Words in the Writ *(ſpreto Habitu, &c.)* for thoſe are but Words of Form, and not of Subſtance: for the Habit of Religion is the Obedience and Profeſſion which he hath made to ſuch Rule, *&c.* and if he relinquiſh that Obedience, and the Rules of that Religion, and departeth, it ſeemeth that he doth relinquiſh the Habit: And if that Departure be certified by any Abbot

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(*a*) *Rot. Pat. 2 Ed.* 1. *M.* 24. A Patent made for the Procurator of the Houſe of St. *Anthony*, to come and take up vagrant Friars, *& Si Fratres & procuratores dict' Dom' contingentes & Nomine Fratrum prædictor' animalia & Bona petunt & recipiunt*, and commanding to arreſt all ſuch as go about without a Teſtimonial of the Procurator, and to take ſuch Monies and Goods, and deliver them to the ſaid Procurator; *Et ſi forſan Literas Regias Datum præſentium præcedentes ſuper Admiſſione eorum ad hujuſmodi Eleemoſynas colligendas prædicti Procuratores Teſtimonium legitimum non habentes exhibeant, minime paratis, &c.*

See alſo 22 *Ed.* 3. 2. Treſpaſs by the Prior of theſe Friars Preachers and *A.* his Confrere for a Battery of the ſaid *A. ad Dampnum prædict' Prioris*, againſt the Abbot of *C.* who pleads, that *A* was a Co-canon of his Houſe, and that he ſued to the King, who commanded that he ſhould take him where he could find him; whereupon he took him, and carried him to Priſon. And by Order of Court he was put to confeſs that he was a *Frere* of the Plaintiff and demur, or elſe to traverſe the Matter alledged; whereupon he pleaded by a Traverſe, *abſque hoc*, that he was *Frere* of the Plaintiff, and Iſſue being joined thereon, a Writ went to the Biſhop of the Dioceſe where the Plaintiff was, who certified that he was his *Frere*.

where ſuch Perſon was remaining, and under his Obedience when he departed and relinquiſhed his Religion, the ſame is ſufficient to have ſuch Writ upon ſuch Certificate; or if it be certified by him who is the Viſitor of the religious Houſe, *&c.* But there are not any Writs in the Regiſter framed upon ſuch Certificate made by any Viſitor or Abbot of any other Houſe, upon which the Party who left his Habit was not remaining at the Time, and therefore *Quære* of the ſame.

Writ de Leproſo amovendo.

THE Writ *de Leproſo amovendo* lieth, where a Man is a Lazar or a Leper, D
and is dwelling in any Town, and he will come into the Church, or amongſt his Neighbours where they are aſſembled, to talk with them, to their Annoyance and Diſturbance; then he or they may ſue forth that Writ for to remove him from their Company; and the Writ is ſuch:

The King to the Sheriff, &c. *or to the Mayor and Sheriffs of* London, *greeting:* E
Becauſe we have received Information that I. *of* N. *is a Leper, and is commonly converſant amongſt the Men of the City aforeſaid, and hath Communication with them as well in publick as in private Places; and refuſes to remove himſelf to a ſolitary Place, as the Cuſtom is, and to him belongs to do, to the great Damage of the Men aforeſaid, and manifeſt Peril by reaſon of the Contagion of the Diſeaſe aforeſaid; We being willing to take Precaution againſt ſuch Danger, as to us appertains, and that that which is juſt and hath been uſed, be done touching the Premiſſes, command you, that taking with you certain diſcreet and lawful Men of the City aforeſaid, not ſuſpected, who have the beſt Knowledge of the Perſon of the ſaid* I. *of* N. *and of ſuch Diſeaſe, you go to him the ſaid* I. *and cauſe him to be ſeen and diligently examined in the Preſence of the ſaid Men, and if you ſhall find him to be a Leper, as before is ſaid, then without Delay, in the beſt Manner you can, cauſe him to be carried away, and removed from the Communication of the ſaid Men, to a ſolitary Place, to dwell there, as the Cuſtom is, leſt by ſuch his common Converſation, Damage or Peril ſhould in any wiſe happen to the ſaid Men. Witneſs,* &c.

And upon that he may have an *Alias* and a *Pluries,* and Attachment againſt F
the Mayor, or againſt him to whom the Writ is directed, if he will not execute the Writ.

But it ſeemeth, if a Man be a Leper or a Lazar, and will keep himſelf G
within his Houſe, and will not converſe with his Neighbours, that then he ſhall not be moved out of his Houſe. But there are divers Manners of Lepers; but it ſeemeth that the Writ is for thoſe Lepers who appear to the Sight of all Men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Fleſh, and by the Smell of them: But for thoſe who are infected with that Diſeaſe in their Bodies, and it doth not appear outwardly upon their Bodies, *Quære,* whether ſuch Writ lieth for to remove them.

Writ De deonerando pro rata portione.

H THE Writ *De deonerando pro rata portione* lieth, where a Man holdeth ten Plow. 125. Oxgangs of Lands by Fealty, and twenty Shillings Rent of the King, and the Tenant doth alien one Part, or one Oxgang, to one Man, and another Oxgang to another Man in Fee, and ſo to others the reſt of the Oxgangs, and the Sheriff or the King's Officer will diſtrain one of the ſaid Tenants for the whole Rent; then he who is diſtrained may ſue forth that Writ, which is thus:

The King to the Sheriff, &c. *greeting:* I. A. *and* W. *have ſhewed unto us, that whereas four Oxgangs of Land with the Appurtenances in* E. *which were* B.'s *and which are holden of us by the Service of thirteen Shillings by the Year, to be rendred by the Hands of our Sheriff of the County aforeſaid for the time being, are come to the Hands of the ſaid* I. A. *and* W. *and alſo to the Hands of* T. *by their Purchaſe; and although they the ſaid* I. A. *and* W. *only hold two Oxgangs of* [235.] *Land thereof, you nevertheleſs exact the ſaid yearly thirteen Shillings of the ſaid* I. A. *and* W. *omitting the ſaid* T. *who holds the other two Oxgangs of Land, and compel them the ſaid* I. A. *and* W. *by various Diſtreſſes, to render to us the ſaid yearly thirteen Shillings, to the great Expence and Grievance of them the ſaid* I. A. *and* W. *whereupon they have beſought us to apply a fit Remedy for them: And becauſe we will not that the ſaid* I. A. *and* W. *be injured in this Matter, we command you, that if upon Inqueſt upon the Premiſſes to be made, or by other lawful Means it ſhall appear to you, that the aforeſaid four Oxgangs of Land are held of us by the Service of thirteen Shillings only, and that they the ſaid* I. A. *and* W. *hold two Oxgangs of Land thereof, and the ſaid* T. *the other two Oxgangs of Land, the Reſidue, as it is ſaid, then having received of the ſaid* I. A. *and* W. *thoſe Services which to us belong, for the proportionate Share of their holding, which they hold thereof, you permit them to be quiet of the reſt of the Service: Provided always, that the ſaid Reſidue of that Service be levied upon the ſaid* T. *to our Uſe, as is juſt. Witneſs*, &c.

A And it appeareth by that Writ, that notwithſtanding the Statute of *Quia* Br. Appar. *emptores terrarum*, that if the King's Tenant do alien Part of the Lands held count 21. of the King, yet the King or his Miniſter may diſtrain one of the Tenants for Dyer 240. a. the whole Rent, *&c.* although that the Statute ſaith, *quod feoffatus teneat pro particula illa, &c.* But it ſeemeth that the King is not bound by the Statute, but a common Perſon is. For if a Man hold twenty Acres of Land by Fealty, and twenty Shillings Rent of another Man, and he alieneth one Acre to 29 H. 8. f. 28. one in Fee, and another Acre to another in Fee, the Lord ſhall not diſtrain the Alienee but for the Rate and Value of the Land which he hath purchaſed, Perkins 129. and ſhall not diſtrain one Alienee for the whole Rent, *&c.* But if the King's Tenant doth alien Part of the Lands which he holdeth of the King without Licence, then the King may chuſe whether he will take the Alienee for his Tenant, or not; and then it is a Queſtion whether the Alienee ſhall have ſuch Writ: But if the Alienee doth pay a Fine to the King for the Alienation, it is Reaſon that he have ſuch Writ as before, if he be diſtrained for the whole 27 H. 8. 26. Rent which iſſueth out of all the Lands, whereof he hath purchaſed but con. Part, *&c.*

And the like Writ as before is awarded to the Queen's Officers, where they diſtrain one Tenant for the whole Rent, where he holdeth but Part of the Lands, and ſeveral other Tenants hold the Reſidue thereof.

Br. Appar. count 21. Plow. 125. b. 29 H. 8. f. 28.

B And if a Man who holdeth one hundred Acres of Land, ought by his Tenure thereof to repair ſuch Bridge, if he alien in Fee twenty Acres to one, and twenty Acres to another, and one of them only be diſtrained to make the Reparations upon a Preſentment found; he ſhall have a ſpecial Writ to the King's Officers, that they do not diſtrain him, but according to the Rate of his Proportion of the Land which he holdeth; and the Writ is ſuch:

The King to his beloved and faithful I. *of* T. *and his Companions our Juſtices, aſſigned to inquire of the Defects of the great Bridge of* C. *and to cauſe thoſe Defects ta be repaired and amended, greeting: It is ſhewed to us on the Behalf of* R. *grievouſly complaining, that whereas it is preſented before you, that the ſame* R. *holds four Hides of Land with the Appurtenances in* D. *in the County aforeſaid, which have been anciently accuſtomed to be charged towards the Reparation of the ſaid Bridge:* Or thus, *Which are aſſerted to be bound to the Reparation of the ſaid Bridge, and although he only holds twenty Acres of Land of the ſaid four Hides of Land, and certain others hold all the Reſidue of the ſaid four Hides; Nevertheleſs you, by reaſon of the Preſentment aforeſaid, endeavour to levy ſeven Pounds (at which Sum the ſaid four Hides of Land are apportioned, for the Reparation of the ſaid Bridge,) upon the ſaid* R. *as if he wholly held the four Hides of Land aforeſaid, whereas he does not hold the ſame, omitting the other Tenants aforeſaid, and cauſe him upon that Occaſion to be grievouſly diſtrained and much diſquieted, to the great Damage of him the ſaid* R. *and the manifeſt Oppreſſion of his Eſtate; whereupon he hath beſought us to provide him a Remedy; And becauſe we will not have him the ſaid* R. *to be unduly charged in this Matter, we command you, that if by Inqueſt to be taken thereon, in the Preſence of him the ſaid* R. *if he will be preſent, or by other lawful Means it ſhall appear to you, that he the ſaid* R. *holds but twenty Acres of the ſaid four Hides of Land only, and the Reſt of the ſame four Hides of Land are in the Hands of other Tenants, as it is ſaid, then cauſe to be levied the ſaid ſeven Pounds, at which the ſaid four Hides of Land are ſo aſſeſſed, for the Reparation of the Bridge aforeſaid, as well of the ſaid* R. *as of the ſaid other Tenants, to wit, of every one of them according to the Proportion of his Holding of the ſaid four Hides of Land, ſparing no Body in this Matter, nor charging any Tenant of the ſame unduly beyond the Proportion of his Holding, notwithſtanding the ſaid Preſentment. And if any thing be levied of the ſaid* R. *unjuſtly beyond the Proportion of his Holding, cauſe it to be reſtored to him without Delay. Witneſs,* &c.

Stamf. Prærog. 30.

C There is another Form of Writ for the King's Tenant, where he is diſtrained for all the Rent, where he holdeth but Part of the Lands out of which the Rent ought to be paid; which ſee in the Regiſter.

But look the Statute of 34 *Ed.* 3. *cap.* 15. That if the King's Tenant *in Capite* alieneth his Lands in Fee without Licence, the Alienation ſhall not bind the King, but that he ſhall have his Prerogative of thoſe Lands and Tenements; and therefore *quære* the Meaning of that Statute, and what is intended thereby.

Writ of Superſedeas.

A [236.] THE Writ of *Superſedeas* lieth in divers Caſes: As if a Man be ſued, and a *Capias* or *Exigent* be awarded againſt him, he may by his Friend ſue forth a *Superſedeas* out of the Place where the *Capias* or *Exigent* was awarded againſt him; or out of the Term he may ſue forth a *Superſedeas* out of the Chancery directed to the Sheriff, that he take Sureties of him, *&c.* to appear at the Day, *&c.* and that he let him at Liberty; or he may find Sureties in the Chancery to appear at the Day of the Return of the *Capias* or *Exigent*; and upon this he ſhall have a *Superſedeas* to the Sheriff, that he let him go, if he have arreſted him thereupon; and if he have not arreſted him, that then he do not arreſt him, but ſuffer him to go in Peace; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Whereas* A. *impleads before us by our Writ*, B. *and certain others contained in our ſaid Writ*, *of a certain Treſpaſs to him the ſaid* A. *by the aforeſaid* B. *and the others aforeſaid committed*, *as it is ſaid*, *and the ſame* B. *becauſe he came not before us to anſwer the ſaid* A. *of the Treſpaſs aforeſaid*, *is put in Exigent in your County to be outlawed*, *he being wholly ignorant of the Exigent aforeſaid*; *whereupon he hath beſought us*, *that whereas he is ready upon the Premiſſes in all Things to ſtand to Right*, *we would aſſiſt him in this Matter*, *we regarding the Supplication aforeſaid*, *as far as it ſhall be juſt*, *command you*, *that if the ſaid* B. *coming Perſonally in your County*, *ſhall render himſelf to our Priſon as the Cuſtom is*, *then Superſede the Exigent aforeſaid*; *and afterwards if the ſaid* B. *ſhall find you ſufficient Bail*, *who ſhall be Bail to have him before us at ſuch a Day*, *whereon our ſaid Writ of Exigent is returnable before us*, *to anſwer the ſaid* A. *of the Treſpaſs aforeſaid*, *and further to do and receive that which our Court ſhall conſider in the Premiſſes*, *then in the mean time cauſe the ſaid* B. *to be delivered out of the ſaid Priſon (if he be detained in the ſame upon that and no other Occaſion) by the Bail aforeſaid*: *And have there the Names of the Bail and this Writ*, &c.

And when he findeth Sureties in the Chancery for to appear at the Day of the Return of the *Exigent*, then he ſhall have a *Superſedeas* of another Form; which ſhall be ſuch:

The King to the Sheriff, &c. C. *hath beſought us*, *That whereas* B. *impleads before us by our Writ*, *the ſaid* C. *and certain others of a certain Treſpaſs to the ſaid* B. *by the ſaid* C. *and the others aforeſaid committed*, *as it is ſaid*, *and although the ſame* C. *is ready to anſwer the ſaid* B. *of the Treſpaſs aforeſaid*, *(if any there was,) and in all Things to ſtand to Right*, *according to the Law and Cuſtom of our Realm of* England, *yet*, *becauſe you have returned before us*, *that the ſaid* C. *was not found in your Bailiwick according to the Proceſs thereof before us had*, *he is put in Exigent by you in your County to be outlawed*, *that we would provide for his Indemnity in this Behalf*: *We*, *becauſe that* W. R. *and* I. *have become Bail before us in our Chancery to have the ſaid* C. *before us at the Day whereon our Writ of Exigent againſt him the ſaid* C. *is returnable*, *to anſwer the ſaid* B. *of the Treſpaſs aforeſaid*, *being willing the ſaid* C. *&c.* *if he is put* *in Exigent aforeſaid, by Occaſion of the Premiſſes and no other, as is ſaid, then in the mean Time ſuperſede doing any thing further in that Exigent, by the Bail abovеſaid; and have there then this Writ. Witneſs,* &c.

B. And if the Clerk, who hath the Keeping of the Rolls for the Taking of Statute-Merchants, forge a Bond in the Name of another, and putteth the Mayor's Seal, and a Seal in the Name of the Party, to the ſame, and makes an Enrolment thereof in the Rolls, and afterwards doth certify the ſame into the Chancery, for which a *Capias* is awarded againſt the Party; then he againſt whom ſuch Proceſs is ſued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole Matter, and reciting that the Party hath upon the Matter ſued forth an *Audita Querela*, directed to the Juſtices of the King's Bench, commanding them to call the Parties before them, *&c.* and commanding the Sheriff, that if the Party who is ſued will find ſufficient Sureties to the Sheriff, to appear at the Day in the King's Bench, and to pay the Debt, if he be condemned, that then he do ſurceaſe to arreſt or to trouble him, *&c.*

C. And if a Man do cite another by the Pope's Bull perſonally to appear at the Court of *Rome*, &c. againſt the Statutes; now if he who made the Citation be committed to Priſon, he may ſue in the Chancery to have a ſpecial Writ directed unto the Sheriff, rehearſing the Matter, commanding him, that if the Parties will find ſufficient Sureties, Body for Body, to appear before the King and his Council at a certain Day, and perform what the Court ſhall adjudge or be decreed for the King or Council, that then he let him at large: And by that Writ the Sheriff ought to ſet him at Liberty; and if he will not, he ſhall have an *Alias* and a *Pluries*, and Attachment againſt him.

D. If a Man depart from his Maſter without ſufficient Cauſe, and another knowing the ſame, doth retain him, for which the Maſter bringeth a Writ againſt him for the retaining of his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear *in Banco* at the Return of the Writ, and have a *Superſedeas* thereupon to the Sheriff, not to arreſt him: and if he have arreſted him, to ſet him at Liberty.

E. And the like Writ and *Superſedeas* ſhall be awarded out of the Chancery; if the Action be brought againſt the Servant for his Departure, and a *Capias* [237.] awarded, *&c.* he may find Sureties in the Chancery for to appear at the Day, and have a *Superſedeas* to the Sheriff, that he do ſurceaſe to arreſt him, *&c.*

A. And if a Man be ſued in the Common Pleas in Debt, or in Treſpaſs for Damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in Chancery to appear before the Juſtices at the Day of the Return of the Writ, and to ſtand right according to Law, he ſhall have a *Superſedeas* to the Sheriff not to arreſt him; and if (*a*) he hath arreſted him, to ſet him at large. But it ſeemeth, that upon a *Capias* or *Exigend' ad ſatisfaciendum*, the Sheriff ought not to let the Party at Liberty after he hath taken him by

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(*a*) *Note*; If he be taken before the *Superſedeas* purchaſed, the *Superſedeas* is not to the Purpoſe: But if he comes in by *Cepi corpus*, there ſhall not be an Attachment, 11 *H.* 6. 32. 19 *H.* 6. 43. accordant, where he was taken before the *Superſedeas* delivered.

Force of the Writ (*a*), becauſe he is in Execution for the Party, &c. And ſo upon an *Exigent* awarded in a Writ of Account, he may ſue forth ſuch *Superſedeas.*

B And ſo if a Man doth become Surety for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, &c. for which Cauſe, Proceſs of Utlagary is awarded againſt the Surety, &c. at the *Exigent* awarded againſt the Surety, he may ſue forth a *Superſedeas*, and find Sureties in the Chancery to appear at the Day, and to ſtand right to the Law; and thereupon he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt his Surety, and if he hath arreſted him, that he let him at Liberty.

And it ſeemeth reaſonable that ſuch Writ ſhall be granted (*b*), becauſe the Fine is a Duty to the King, and the King may reſpite the ſame if he pleaſe; but if an *Exigent* be awarded upon a Judgment at the Suit of the Party, ſuch *Superſedeas* is not allowable.

C If a Man be indicted before Juſtices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the Day of the Return of the Proceſs awarded by the Juſtices of Peace, and thereupon have a *Superſedeas* to the Sheriff not to arreſt him, and if he have arreſted him, to ſet him at Liberty; and that Surety ſhall be Body for Body, &c.

D If a Man be put in *Exigent*, at the Suit of another in ſeveral perſonal Actions, he may find Sureties in Chancery Body for Body, to appear to every Action at the Return of the Writs; and thereupon he ſhall have a *Superſedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the Days, &c. commanding him not to arreſt him, &c. And the Forms of the Writs of the *Superſedeas* are in divers Manners.

E And if a Man be indicted before Juſtices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the Party out of the Chancery may ſue forth a *Superſedeas* to the Sheriff not to arreſt him, &c. becauſe the Indictment is removed by *Certiorari*, &c. or the Juſtices of Peace *ex Officio* ought for to award a *Superſedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it ſeemeth: *Tamen quære.* And in ſuch Caſe he may have a *Superſedeas* out of the Chancery directed to the Sheriff, commanding him, that if the Party will yield himſelf to the Sheriff, and find Sureties to appear at the Day of the Return of the Writ, that then the Sheriff do not arreſt him, &c.

If a Man ſueth a Knight of St. *John's* of *Jeruſalem*, and other by their proper Names, and not by the Name of Knight of St. *John's*, &c. and he be ſued to the *Exigent*, the *Superſedeas* ſhall be purchaſed in the Name of the Prior, and of the ſaid Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the Day; and thereupon they ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him, &c.

(*a*) Nor ought the Sheriff to ſurceaſe from taking him. 18 *H.* 6. 19. 2 *H.* 7. 12, 19.

(*b*) For if a *Mandamus* comes to the Eſcheator at the Suit of the Heir; the Eſcheator ought not to ſurceaſe, by Reaſon of the *Superſedeas.* *Dyer* 170. *in Caſu hæredis Domini* Powis. See 4 *H.* 7. 16. held ſo by *Fairfax* in a *Diem clauſit extremum.*

F If a Man be condemned in Debt or Treſpaſs by falſe Verdict, and a *Capias* be awarded to arreſt the Party, now if the Party ſueth an Attaint, he may come into the Chancery, and there find Sureties that he ſhall appear at the Day, *&c.* and will anſwer the Party, and ſatisfy the King and the Party what belongeth to them, if the Attaint doth paſs againſt him; and upon the ſame he may have a *Superſedeas* to the Sheriff, that he do not arreſt him; and the Form of the Writ is ſuch:

G (*a*) *The King to the Sheriff*, &c. A. *hath ſhewed unto us, That whereas* B. *lately impleaded in our Court before our Juſtices lately Itinerant in the ſaid County, the aforeſaid* A. *and certain others of a certain Treſpaſs, to the ſame* B. *by the aforeſaid* A. *&c. committed, as it was ſaid, of which ſaid Treſpaſs the ſame* A. *by the Inqueſt (upon which he put himſelf before the ſaid Juſtices) was convicted, by which the ſaid* A. *is now in Priſon, to remain therein, until we ſhall be ſatisfied of that which to us appertains, in this Behalf, and the ſaid* B. *of the Damages adjudged to him; and now the ſaid* A. *hath arrained by our Writ returnable before us*, &c. *whereſoever*, &c. *a certain Jury of twenty-four Knights to attaint the Jurors of the Inqueſt aforeſaid, and hath beſought us, that pending the Jury aforeſaid ſo before us, we would cauſe him the ſaid* A. *to be delivered out of the Priſon wherein he is ſo detained, ſo that he may be able to proſecute the ſame according to the Law*, &c. *We willing to aſſiſt the aforeſaid* A. *in the Premiſſes*, &c. *and becauſe that the ſame* A. *hath found before us in our Chancery certain Bail, to wit,* A. *and* B. *of your County, who have become Bail*, &c. *every of them, to ſatisfy as well to us of that which to us belongs, as the aforeſaid* B. *of his Damages (as is before ſaid) adjudged, if the Jury aforeſaid ſhall paſs againſt him, or the ſaid* A. *ſhall not proſecute the ſame, do command you, that without* [238.] *Delay you cauſe him the ſaid* A. *to be delivered out of the Priſon aforeſaid, if he be detained in the ſame upon that, and no other Occaſion, by the Bail aboveſaid, ſo that he may be able to proſecute the ſaid Jury, as he ought; and have before the ſaid Juſtices at the ſaid Day this Writ. Witneſs*, &c.

A If a Man be condemned in Treſpaſs, and the Plaintiff prayeth an *Elegit*, and a *Capias* is awarded againſt the Party for the King's Fine, the King may grant a *Superſedeas* directed to the Sheriff, that he do not arreſt the Defendant upon the *Capias*, becauſe that the Plaintiff hath made his Election to have his Execution by *Elegit*.

B And if in Treſpaſs the Defendant do agree with the Plaintiff pendant the Suit, he ſhall have a *Superſedeas* to the Sheriff, that he do not execute the Proceſs ſued forth againſt him; but then it ſeemeth the ſame Agreement ought for to appear upon Record in the Court, *&c.*

C If a Man be condemned in Treſpaſs, and the Defendant doth bring an Attaint, and the Plaintiff ſue an Execution by *Elegit*, and a *Capias* is awarded againſt the Defendant for the King's Fine; the Defendant in Chancery may ſue a *Superſedeas* of the *Capias*, reciting in the Writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath ſued forth an *Elegit*, commanding the Sheriff to whom the *Superſedeas* is directed, that if the

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(*a*) But *Note*; The Writ of Attaint is not a *Superſedeas*, nor ſhall any *Superſedeas* at all be granted in Attaint. *Dyer* 61.

Defendant do yield himſelf to Priſon, and there find Sureties to the Sheriff to ſatisfy the King for what doth belong to him, *&c.* that then he do deliver him out of Priſon upon that Security, if he conceive the ſame to be ſufficient Security.

D If a Man ſueth a Writ *de uxore abducta cum bonis viri*, and a *Capias* or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, Body for Body, to appear at the Day; and upon the ſame he ſhull have a *Superſedeas* to the Sheriff, to ſet him at Liberty, if he have arreſted him. And ſo upon an Appeal of Rape, if the Defendant in Chancery find Sureties, Body for Body, to appear at the Return of the Writ, and to ſtand to the Law, he ſhall have a *Superſedeas* to the Sheriff to ſet him at Liberty, *&c.* Poſt. 251. B.

E And ſo if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superſedeas* to the Sheriff, reciting the Matter, commanding him to ſet him at Liberty, if he have arreſted him.

If a Man ſueth a *Supplicavit* out of the Chancery, to arreſt a Man to find Sureties of Peace, the Defendant who is arreſted may have a *Superſedeas* in Chancery to the Sheriff, commanding him not to arreſt him; and the Writ ſhall be ſuch:

The King, &c. *greeting: Although lately upon the Prayer of* M. *ſuggeſting to us that* I. *had grievouſly threatened the ſaid* M. *touching his Life and the Mutilation of his Member, we commanded you by our Writ, that you ſhould cauſe him the ſaid* I. *to come perſonally before you, and compel him to find ſufficient Bail, that he the ſaid* I. *under a certain Pain to be reaſonably impoſed upon him by you, for which you would anſwer to be Bail, that he would not bring upon the ſame* M. *or procure to be brought on him, any Damage or Ill; and if he ſhould refuſe to do this before you, then you ſhould take him, and cauſe him to be kept ſafely in our Priſon of* N. *until he ſhould find Security in Form aforeſaid: Yet becauſe* R. *and* S. *&c. perſonally appearing before us in our Chancery, have become Bail for the aforeſaid* I. *that he ſhould not bring, nor procure to be brought, any Damage or Ill to the ſame* M. *of his Body, to wit, each of them under the Pain of twenty Pounds, which they granted to be levied of their Lands and Chattels to our Uſe, if he the ſaid* I. *ſhould bring or procure to be brought any Damage to him the ſaid* M. *or his Body: We command you, that you ſuperſede the Execution of our ſaid Writ to you in this Behalf directed, by the Bail aforeſaid*, &c. *Witneſs*, &c.

And if the Juſtices of Peace do award a Precept or a Warrant againſt a Man to find Sureties for the Peace, he againſt whom the Warrant is, may find Sureties in the Chancery for to keep the Peace, *&c.* and upon the ſame have a *Superſedeas* to the Juſtices of the Peace, that they do ſurceaſe, *&c.* to arreſt him, *&c.* and thereupon the Juſtices ought to ſurceaſe to make any Warrant againſt him afterwards; and if they have made any, that they ought to award a *Superſedeas* to the Sheriff, commanding him to ſurceaſe; and the Writ directed to the Juſtices of the Peace is ſuch:

The King to his beloved and faithful his Juſtices aſſigned to keep the Peace in the County of Berks, *greeting*, &c. W. *hath beſought us, that whereas he is afraid that upon the Proſecution of* T. *he ſhall be taken and arreſted and grievouſly impriſoned by you, until he ſhall find Security that he the ſaid* W. *will not do nor procure to be done, any Damage or Ill to him the ſaid* T. *of his Body, we would command the Caption and Arreſt aforeſaid, to be ſuperſeded by ſufficient Bail: We, becauſe that* R. S. P. *and* F. *of the County of* W. *in our Chancery perſonally appointed, have become Bail for him the ſaid* W. *that he ſhall not do, nor procure to be done, any Damage or Ill to the ſame* T. *of his Body, to wit, every one of them under the Pain of one hundred Pounds, which they have granted to be levied upon their Goods and Chattels to our Uſe, in Caſe that any Damage or Ill happen to the ſame* T. *of his Body, by the ſaid* W. *or his Procurement, regarding the Prayer aforeſaid, command you, that you wholly ſuperſede by the Bail aboveſaid, the Caption and Arreſt of the Body of the ſaid* W. *to be made on that Occaſion*, &c. *Witneſs*, &c.

And if the Wife be in Fear or Doubt of her Huſband that he will beat her or kill her, *&c.* ſhe may ſue a *Supplicavit* in Chancery againſt her Huſband, [239.] to find Sureties that he do not beat her, nor evil intreat her, and for to govern rule, and chaſtiſe her reaſonably; and the Writ is ſuch:

The King to the Sheriff, &c. R. *the Wife of* I. B. *hath beſought us, that whereas ſhe of her Life*, &c. *is grievouſly and manifeſtly threatened by the ſaid* I. B. *we would provide for the Safety of her the ſaid* R. *in this Behalf; We regarding the Prayer aforeſaid, command you, firmly injoining, that you cauſe him the ſaid* I. B. *to come perſonally before you, and by all means compel him to find ſufficient Bail*, &c. (as above) *that he will well and honeſtly treat and govern the aforeſaid* R. *and that he will not do, nor procure to be done, any Damage or Ill to her the ſaid* R. *of her Body, otherwiſe than lawfully and reaſonably belongs to her Huſband, for the Cauſe of Government and Chaſtiſement of his Wife. And if this before you*, &c.

And if a Man in Court-Baron in a Writ of Right, or in other Court, as in A *London*, in a Writ of Right, vouch a Foreigner to Warranty, *&c.* the Tenant who voucheth may ſue forth a *Superſedeas* directed to the Court, commanding them that they do not proceed in the Plea, until the Warranty be determined, *&c. quod vide* in the Regiſter, *fol.* 5. 11. *&* 13. And upon the ſame he may have an *Alias*, and a *Pluries* and an Attachment, againſt the Bailiffs, or Mayor of *London* and Sheriff, if they will not ſurceaſe, *&c.*

And if a Man ſueth a Prohibition to the Spiritual Court and to the Parſon, B and notwithſtanding the Spiritual Judge doth proceed to excommunicate the Party, and upon Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who ſued the Prohibition ſhall have a *Superſedeas* to the Sheriff, reciting the whole Matter, commanding him that he do not arreſt the Party; and if he have arreſted him, that he deliver him: *Quod vide* in the Regiſter, *fol.* 67. And he may have a *Superſedeas* out of that Court out of which the Prohibition did iſſue, *&c.*

If the Collectors of the Subſidy or Tenths granted by the Clergy are excommenged by the Ordinary for their Contumacy, *&c.* and that be certified, and thereupon a Writ directed to the Sheriff for to arreſt them, if it be teſtified in the Chancery afterwards by the Sovereign of the Collectors, that they have ſatisfied and ſubmitted themſelves; then upon that a *Superſedeas* ſhall be directed to ſurceaſe to arreſt them; and if he hath arreſted them, that he deliver them.

And if the Biſhop do certify an Excommunication into the Chancery againſt one for a Contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certify in Chancery, that the Defendant hath appealed to *Rome*, or elſewhere: Now upon that Certificate he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him pendent the Appeal; and if he have arreſted him, that then he do deliver him, *&c.*

And ſo if he who is excommunicate ſheweth in Chancery the Pope's Letters, teſtifying that he hath appealed, *&c.* he ſhall have a *Superſedeas* to the Sheriff commanding him for to ſurceaſe, *&c.* and if he hath taken him by Force of the Writ of *Excommunicato capiendo*, that then he do deliver him; *quod vide Regiſt. fol.* 68.

C If a Man take one as his Villain, and the other ſueth a Writ *de Homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery to yield himſelf and his Goods, if, *&c.* and thereupon he ſhall have a *Superſedeas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. *Regiſt.* 79, 80.

D If a Man do hold Plea in the County of a Treſpaſs which is *Vi & armis*, *&c.* the Defendant may ſue out of the Chancery a *Superſedeas* unto the Sheriff or to the Bailiffs of the Hundred where the Plea is holden, reciting that a Plea of Treſpaſs *Vi & armis* ſhall not be holden in a leſs Court than before the King, or other Juſtices by his Commandment. *Regiſt. fol.* 111. Finch. 306.

E And upon a Writ of Error brought of a Judgment given in *London* or other Court, the Party ſhall have a *Superſedeas* directed to the Mayor and Sheriffs, or other Officer, to ſurceaſe to award Execution. *Regiſt. fol.* 129.

F If a Man be diſtrained by a Proceſs which iſſues out of the Exchequer, as Executor to an Accountant there, he may have a *Superſedeas* out of the Chancery directed to the Treaſurer and Barons of the Exchequer, ſurmiſing that he is not Executor nor Surety for the Accountant, *&c.* commanding them that they do ſurceaſe, until they have inquired the Truth thereof.

G And the like Writ is given where the Barons do award Proceſs of Diſtreſs againſt any one who hath not any of the Lands of him who was the Accountant, *&c.* but of his Purchaſe before he was Accountant; *quod vide Regiſt.* 144.

H And if the Sheriff doth hold Plea of forty Shillings, the Defendant may ſue forth a *Superſedeas*, that he do not proceed, *&c.* or after Judgment he may ſue a *Superſedeas* directed to the Sheriff, commanding him not to award Execution upon ſuch Judgment; and upon that an *Alias*, a *Pluries* and an Attachment. *Regiſt.* 145. 41 *Ed.* 3. *Brief* 55. *con. in C. B.* 43 Ed. 3. 21. and 19 H. 6. 8. con.

If a Man for Debt of ten Pounds ſue in the County by divers Plaints there, every Plaint under the Sum of forty Shillings, where the Debt is one intire Debt, the Defendant may ſue a *Superſedeas* to the Sheriff, commanding him not to hold Plea in thoſe Plaints.

If a Man ſue one in the County before the Sheriff for Breach of Covenants, to his Damage of ten Pounds, or above the Sum of forty Shillings, then the Defendant may ſue a *Superſedeas* to the Sheriff that he do ſurceaſe; *quod vide Regiſt.* 146.

[240.] And if a Man do ſue forth an *Audita Querela* to avoid a Statute-ſtaple or A
a Statute-merchant, he ſhall have a *Superſedeas* to the Sheriff not to do Execution hanging the Plea, *&c.* *Regiſt.* 113.

Note, That the Conſtable of *Dover*, who is Warden of the Cinque Ports, B
cannot hold Plea of a Thing which doth belong to be determined in the County, if it be not of a Thing concerning the Keeping of the Caſtle of *Dover*; and if he do, the Party ſhall have a Writ directed unto him to ſurceaſe, and upon the ſame an *Alias* and a *Pluries*, and an Attachment; and the Writ ſhall be ſuch:

The King to his beloved and faithful B. *Conſtable of his Caſtle of* Dover *and Keeper of his Cinque Ports, or to his Lieutenant, greeting: Whereas amongſt other Articles which Lord* Edward *ſome time King of* England, *our Grandfather, granted for the Amendment of the People of his Realm, it is ordained, that the Conſtable of the Caſtle of* Dover *ſhall not hold Plea at the Gate of the ſaid Caſtle of any foreign Plea of the County, that doth not touch the Cuſtody of the ſame Caſtle; and you a certain Plea between* W. *of* C. *and* P. *of a certain Debt which the ſame* W. *requires of the ſaid* P. *(and which ſaid Plea doth not concern the Cuſtody of the ſaid Caſtle) held before you at the Gate of the Caſtle, and unjuſtly diſquiet him the ſaid* P. *on that Occaſion by various Diſtreſſes, againſt the Tenor of the Articles aforeſaid, as on the Behalf of the ſaid* P. *we are given to underſtand: We willing that the ſaid Articles be inviolably obſerved, command you, if it is ſo, that then you wholly ſurceaſe from further holding that Plea before you, and that you do not moleſt nor in any wiſe aggrieve him the ſaid* P. *againſt the Tenor of the ſaid Articles; and the Diſtreſs, if any,* &c.

And if the Conſtable doth hold Plea of any Thing of which he ought not C
for to hold Plea, the Party ſhall have his Action upon the Statute, although he doth not ſue forth any Writ before directed to the Conſtable.

Writ De procedendo ad Judicium.

Ant. 152. D. NOTE, That by the Statute made *Anno* 2 *Ed.* 3. *cap.* 8. it is enacted, That Commandment be not either by the Great Seal nor the Petty Seal to delay common Right; but if ſuch Commandments come, *&c.* that the Juſtices ſhall not ſurceaſe to do Right in any Point.

And by the Statute made *Anno* 14 *Ed.* 3. *cap.* 14. the Juſtices ſhall not ſurceaſe for the Great Seal or Leſſer Seal.

And by that it appeareth, that the King's Juſtices ſhall proceed according to Law, notwithſtanding the King's Commandments directed and delivered to them: And if the Party thinketh in his Conſcience, that ſuch Commandments ſhall be made, then he may ſue forth a Writ upon that Statute, commanding them to proceed, notwithſtanding ſuch Commandments; and the Writ ſhall be ſuch:

The King to his beloved and faithful W. *&c. and his Companions, Juſtices aſſigned to take the Aſſiſes in the County of* Salop, *greeting: Whereas in our Parliament at* Northampton *called in the ſecond Year of our Reign, it was agreed and ordained by us, the Prelates, Earls, Barons and other great Men, and the whole Commons of our Realm being in the ſame Parliament, that it ſhould not be commanded by our Great Seal nor by our Little Seal, to hinder or prorogue the Common Law, and if ſuch Commands ſhould come, that the Juſtices for that Cauſe ſhould not ſurceaſe to do Juſtice, as in the ſaid Statute it is more fully contained: We command you, that you in no wiſe ſurceaſe to do Juſtice to the Parties in an Aſſiſe of Novel Diſſeiſin, which* T. *hath arraigned before you by our Writ againſt* A. *and* I. *his Wife, and others in our original Writ contained, of Tenements in* E. *by virtue of any Command of the Great Seal or Little Seal to you directed or to be directed, againſt the Tenor of the Statute aboveſaid. Witneſs*, &c.

But it ſeemeth to be in vain to ſue forth ſuch Writ, if the Juſtices do conſider their Oath, and their Duty to God and the King: But becauſe ſome Juſtices are fearful, and will not do a Thing which may turn to their Diſpleaſure, that Writ was ordained, as it ſeemeth, and for no other Cauſe, for the Statute was ſufficient in itſelf; and the Party may have in the End of the Writ theſe Words, *viz.*

But proceed to the taking of the ſame Aſſiſe as of Right ought to be done, according to the Law and Cuſtom of our Realm of England. *Witneſs*, &c. Br.Ni.pri.37.

E And by the Statute of *Weſtm.* 2. upon Iſſues joined in the Common Pleas or King's Bench, they ſhall be tried by *Niſi prius* before the ſame Juſtices in the Country. And by the Statute of Fines, in the Time of Vacation thoſe Iſſues ſhall be tried before one of thoſe Juſtices, aſſociating to him a Knight, *&c.*

And by the Statute of *York*, a Juſtice of Aſſiſe aſſociating to him an honeſt Man ſhall take *Niſi prius*, and try the Iſſues ariſing thereupon taken in the Common Pleas or King's Bench, if they need not great Examination, *&c.* But in thoſe Caſes it appeareth by the Regiſter, the King by his Writ may reſtrain and command the Juſtices, that they do not award *Niſi prius*; and if they have awarded any Writ of *Niſi prius*, that they ſend a *Superſedeas*; and the Writ ſhall be ſuch:

The King to his Juſtices of the Bench, greeting: Although by the Common Council of our Realm it is agreed and appointed, that Inqueſts and Juries to be taken in Pleas of Land, which are not of great Examination, ſhall be taken in the Country before a Juſtice of the Place where the Plea is, having aſſociated to him ſome honeſt Man of the Country, Knight or other, ſo that a common Day be given in the Bench, and a certain Day and Place in the Country, in the Preſence of the Parties; and alſo that Inqueſts and Juries in Pleas of Land that require great Examination, ſhall be taken before two Juſtices of the Bench in Form aforeſaid; [241.] *nevertheleſs the Plea which is before you in the Bench aforeſaid by our Writ be-*

tween W. *Demandant, and* T. *Tenant of the Manor of* S. *with the Appurtenances in the County of* W. *eſpecially concerns us, more eſpecially ſeeing that the ſaid* T. *holds the ſaid Manor for the Term of his Life of our Grant, and after the Death of the ſame* T. *the ſaid Manor ought wholly to revert to us and our Heirs; We willing to take care of our Indemnity in this Behalf, command you, that if you happen to proceed to take the Inqueſt thereupon, then that you take ſuch Inqueſt before us in the Bench aforeſaid, and not elſewhere, the Concord and Statute aforeſaid notwithſtanding; and if you ſhall have demanded the Inqueſt thereof to be taken by our Writ of* Niſi prius, *then you ſhall demand the taking of that Inqueſt in the Country to be ſuperſeded. Witneſs,* &c.

There is another Form of Writ for that Matter in the Regiſter. And *M.* 32 *H.* 6. it appeareth, that it is in the Juſtices Diſcretion, whether they will grant *Niſi prius*, or not; and by the like Reaſon, the King at his Diſcretion, and by his Writ directed to the Juſtices, may reſtrain the ſame. A

Stamf. 156. Br.Ni.pri.35. Procedend.14. And *Niſi prius* ſhall not be granted where the King is Party, without the King's ſpecial Warrant, or the King's Attorney's Aſſent, notwithſtanding the aforeſaid Statutes.

Writ upon the Statute made for the King's Steward and Marſhal, that they do not hold Plea, if not, &c.

10 H. 7. 13. SEE by the Statute of *Articuli ſuper Chartas, cap.* 3. (*a*) That the Steward and Marſhal ſhall not hold Plea of Freehold, nor any Plea of Treſpaſs, but only of Treſpaſs done in the King's Houſe, and other Treſpaſſes done within the Verge, and of Contracts and Covenants which ſome of the King's Houſhold ought to have againſt another of his Houſhold, and no other; and no Plea of Treſpaſs ſhall proceed, which is not brought before the King remove out of the Verge where the Treſpaſs ſhall be done, ſo as that they be ended before the King go out of the Bounds of the Verge where the Treſpaſs is done; and if they cannot be ended there, the Parties ſhall ceaſe, and ſhall be tried at the Common Law. And the Steward ſhall not take Cognizance of the Debts of other Men, but only of ſuch as be of the King's Houſe: He ſhall hold no other Plea by Obligation made at the Diſtreſs of the Steward or Marſhal; and if they do contrary to that Ordinance, it ſhall be void. And the Court of the Marſhalſea, nor the Juriſdiction thereof, ſhall not exceed above twelve Miles by the Statute made 13 *R.* 2. *c.* 3. And a Man may add in Action brought againſt him in the Court of the Steward or Marſhal, that he was not of the King's Houſhold at the Time of the Treſpaſs or Contract made, or that the Plaintiff was not one of the King's Houſhold at that Time. B

(*a*) See 10 *H.* 6. 13. In Treſpaſs brought there; of a Treſpaſs done within the Verge, it is neceſſary that one of the Parties be of the Houſhold, *&c.* as well as in Contracts, *&c.* for elſe an Action is maintainable on the Statute. *Nul tiel Record* a good Plea there. 7 *H.* 6. 30.

C And if a Man be ſued in the Court of the Steward and Marſhal contrary to the Statute, then he who is grieved ſhall have ſuch Writ (*a*):

The King to the Steward and Marſhal of his Houſhold, greeting: Whereas amongſt other Articles which Lord Edward *ſome time King of* England, *our Grandfather, granted for the Amendment of the State of his People, it is ordained that the Steward and Marſhal of our Houſhold ſhall not hold Plea of Freehold, of Debt, Covenant, Treſpaſs, or of Contract made between the King's People, but only of Treſpaſs done within the Houſe, and of other Treſpaſſes done within the Verge, and of Contracts and Covenants that any of the King's Houſe ſhall have made with others of the ſame Houſe and in the ſame Houſe, and not elſewhere; and now from the Complaint of* A. *and* B. *we have received Information that you, at the Proſecution of* I. *of* L. *hold before you a Plea between the aforeſaid* A. *and* I. *(who are not of the ſame Houſe, as it is ſaid) of a certain Debt which the ſame* A. *demands of the ſaid* I. *to the great Damage and Grievance of him the ſaid* A. *and againſt the Form of the Ordinance aforeſaid; We therefore being willing that the ſaid Ordinance be obſerved in all and every its Articles, command you, if ſo it is, that then you wholly ſurceaſe from farther holding that Plea before you, not moleſting or in any wiſe aggrieving him the ſaid* A. *againſt the Tenor of the Ordinance aforeſaid; and the Diſtreſs, if any*, &c. *Witneſs*, &c.

D And if the Plea be lawfully begun before the Steward and Marſhal of the King's Houſe within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby diſcontinued, and then it behoveth the Party to commence his Action at the Common Law, and not within the Verge before the Steward and Marſhal; and if he do, the Party grieved ſhall have ſuch Writ:

The King to the Steward and Marſhal of his Houſhold, greeting: Whereas amongſt other Articles which Lord Edward *ſome time King of* England, *our Grandfather, granted for the Amendment of the State of his People, it is ordained that the Steward and Marſhal of our Houſhold ſhall not hold Plea of Freehold, of Debt, of Covenant or Contract of the Men of the People, but only of Treſpaſſes of our Houſhold and other Treſpaſſes done within the Verge, and of Contracts and Covenants which any of the ſaid Houſhold ſhall make with another of the ſame Houſhold and in the ſame Houſe, and not elſewhere; and they ſhall plead no other* [242.] *Plea of Treſpaſs that is not attached by them before we depart from the Verge where the Treſpaſs was committed, and ſhall plead and determine thoſe Pleas ſpeedily, from Day to Day, ſo that they may be pleaded and determined before we depart from the ſame Verge where the Treſpaſs was committed; and if it ſo be, that they cannot be determined within the Limits of the ſame Verge, ſuch Pleas ſhall ceaſe before the Steward and Marſhal, and the Plaintiffs ſhall have recourſe to the Common Law: And now from the grievous Complaint of* A. *and* B. *we have*

(*a*) *Note*; A good Rule by *Babbington.* 9 *H.* 6. 2. If a Statute gives a greater Penalty for an Offence, and alſo a ſpecial Action; there, if the Party who brings the Writ does not make mention of the Statute, he ſhall have no Advantage of the Penalty given by the Statute; as for Hunting in Parks, or *Pro uxore abducta cum bonis Viri.* But if a Statute gives a greater Penalty; but no other Action lies, but that which was before at Common Law, there a Man ſhall have Advantage thereof (without mentioning the Statute) as in Waſte, *&c.* See 9 *Ed.* 1. *Fitz. Tenant in Dower.* So in a ſpecial Aſſiſe, where the Party is found a Diſſeiſor with Force, *&c.*

received Information that you, at the Suit of R. *of* B. *them the ſaid*, &c. *do diſtrain to anſwer before you to the aforeſaid* R. *of a certain Treſpaſs to the ſame* R. *by the ſaid* A. *and* B. *committed within our Verge at* E. *in the twelfth Year*, &c. *as it is ſaid; which ſaid Plea was not attached by you before we departed from that Verge, and many Ways unjuſtly diſquiet them upon that Occaſion, to the great Expence and Grievance of them the ſaid* A. *and* B. *and againſt the Tenor of the Articles aforeſaid; We therefore willing that the ſaid Ordinance be inviolably obſerved in all and every one of its Articles, command you, if ſo it is, that then you in no wiſe diſtrain them the ſaid* A. *and* B. *to anſwer before you of ſuch Treſpaſs, but wholly ſuperſede the further Holding of that Plea before you; and the Diſtreſs, if any*, &c. *Witneſs*, &c.

And if a Man be ſued by Plaint before the Steward and Marſhal of the A King's Houſe, who is not of the King's Houſhold, and the Debtor plead, and affirmeth the Juriſdiction of the Court; and the Cauſe be adjudged againſt him; yet he ſhall have an Action upon the Statute againſt the Party who ſueth him there; *quod vide T.* 3 *H.* 3. Title *Eſtoppel.*

Writ of Certiorari *to remove Records, &c.*

THE Writs of *Certiorari* for to remove Records out of one Court into B another are of ſeveral Forms; and the Form of the Writ to remove the Record of Rediſſeiſin is ſuch:

The King to the Sheriff, &c. *Becauſe for ſome certain Cauſes we will be certified upon the Record and Proceſs, of a certain Inquiſition made before you and the Keepers of the Pleas of our Crown in your County at* N. *by our Writ upon a certain Rediſſeiſin to* I. *by* R. *done, as it is ſaid, of one Meſſuage with the Appurtenances in* N. *We command you, that if Judgment be thereupon given, then that you ſend the Record and Proceſs aforeſaid, with all Things touching them, to us, under your Seal diſtinctly and openly, and this Writ* (*a*), *ſo that*, &c. *whereſoever,*

(*a*) *Where the Tenor of the Record is ſufficient, and where the Record itſelf muſt be removed.*

If one brings Debt on a Recovery in an inferior Court, as in a Court of Pie powders, *&c.* there it is not neceſſary for the Party to have the Record itſelf, nor the Tenor of it: So if one brings Debt in *C. B.* on Damages recovered in *B. R.* or in the Court of *Norwich*; but if *Nul tiel Record* be pleaded there, it is ſufficient if the Tenor of the Record be removed into Chancery by *Certiorari*, and ſent thence by *Mittimus*. 7 *H.* 6. 19. See 19 *H.* 6. 79 and 80. accordant, *Dyer* 187.

2. Where one is to ſue Execution of a Record in another Court, as where it is to ſue Execution in *C. B.* on a Recovery in Ancient Demeſne, or before Juſtices of Aſſiſe, or of *Oyer* and *Terminer*, there the Record itſelf ought to be removed into Chancery by *Certiorari*, and the ſaid Record with the *Certiorari* ſent into *C. B.* by *Mittimus*; and ſo if an Attaint is before ſued on ſuch a Recovery. 34 *H.* 6. 251. But when Execution is to be ſued in *C. B.* upon a Record which remains in the Treaſury there, as on a Fine, Recovery, *&c.* (Note, All thoſe Records were removed into the Receipt of the Exchequer, *circa Temp.* 9 *H.* 4. 37 *H.* 6. 17.) But where it is in the Chancery, as on a Petition among Parceners, *Dyer* 136. there they will not ſend in the Record itſelf, but a *Certiorari* to the Chamberlain and Treaſurer, and a *Mittimus* of the Tenor of the Record: See the Cauſe 39 *H.* 6. 4. *per Priſot*; and if the Tenor of the Record be

ever, &c. *that having inſpected the Record and Proceſs aforeſaid, we may cauſe further to be done thereupon, that which of Right, and according to the Law and Cuſtom of our Realm of* England, *ought to be done. Witneſs*, &c.

And he may remove it after a Diſſeiſin, *&c.*

And if a Man be attainted in a Rediſſeiſin or a Poſt-diſſeiſin, and hath no Lands within the County to be put in Execution, he may remove that Record by a *Certiorari* into the King's Bench, and there have Execution. And he may remove a Recovery in an Aſſiſe of *Novel Diſſeiſin* into the King's C Bench by a *Certiorari* in like Manner. But the Writ of *Certiorari* ſaith, *If Judgment be thereupon given, then the Record and Proceſs*, &c. as above. By which it appeareth, that it ought that Judgment be given in the Aſſiſe, *&c.* otherwiſe it ſeemeth he ſhall not have the Writ; for the *Certiorari* is ſaid to remove the Record, to the Intent that he may ſue forth Execution upon the ſame when it is removed in the King's Bench, for there they may award Execution into every County to execute the ſame.

Poſt. 247.

See a Recovery in Ancient Demeſne, 39H. 6. 3 & 4. But ſee 44 Ed. 3. 28. 36 H. 8. Br. Certiorari 20. There is no ſuch Writ of Certiorari to remove the Record in C. B. immediately, but firſt in the Chancery. Yet 43 Aſſ. 20. the contrary is admitted.

D If a Man do recover Lands by Aſſiſe of *Novel Diſſeiſin*, and the Defendant will ſue a Certificate before other Juſtices, there he ought to ſue forth a *Certiorari* to the Juſtices of Aſſiſe, to certify the Record unto the new Juſtices, who hold Plea upon the Certificate, and the Words *(ſine Dilatione)* ſhall not be put in any Writ which hath a certain Day of Return.

21 Ed. 3. 5. Br. Cert. Action 5.

E And if a Man recover *per Aſſiſe de Novel Diſſeiſin*, and the Defendant will ſue an Attaint before other Juſtices, then he ought for to have a *Certiorari* to the Juſtices of Aſſiſe to certify the Record, *If Judgment be given.*

And if a Man recover before Juſtices in Eyre in an Aſſiſe of *Novel Diſſeiſin*, the other Party may ſue forth an Attaint before other Juſtices, and have a *Certiorari* to the Juſtices in Eyre to ſend the Records before the other Juſtices.

F And the King may ſend his Writ of *Certiorari* to the Barons, Treaſurer and Chamberlains of the Exchequer, to certify the Record of Aſſiſe in the Treaſury in their Cuſtody into the King's Bench.

37 H. 6. 16.

There is another Writ of *Certiorari* to the Treaſurer and Chamberlains of the Exchequer to certify the Record of the Aſſiſe taken, but the Judgment

9 Ed. 4. 50. Choc. 24 Ed. 3. 24. 15 Ed. 3. 5. 8Ed. 4. 25, 26.

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be before the *Certiorari* filed in Chancery, they will not ſend the *Certiorari* into the *Recept.* (Treaſury) nor ſend in the Tenor which is there filed, but only *Tenorem Tenoris*, and it ſeems that is ſufficient. 17 *H.* 6. 17, 28. See 24 *Ed.* 3. 79. that no Execution can be on the Tenor of a Record. *Dyer* 217. No *Scire facias* on the Tranſcript of a Reſummons ſent out of Chancery into *C. B.* and ſee *Dyer* 228. and 5 *H.* 7. 25. where a Record is pleaded in the ſame Court, and *Nul tiel Record* pleaded thereto, it ought not to be entred *quod habeat hic Recordum ſub ſuo periculo. Et quia Juſticiarii hic* ne *adviſari volunt ſuper Inſpectionem & Examinationem Recordi, &c. Dies dat' eſt partibus, &c.* See and note 31 *H.* 6. 51. 39 *H.* 6. 3. 32 *Ed.* 3. *Quare imp.* 1. where *Nul tiel Record* is a good Plea. See 7 *H.* 6. 30.

Note; The Statute 1 & 2 *Ph. & M.* is, that no *Certiorari* to remove any Recognizance ſhall be awarded, except the Writ be ſigned with the Hand of the Chief Juſtice, or ſome other Juſtice in his Abſence. *Vide Raſt. Stat. Mainpriſe, pl.* 45.

Note; A Record may be removed after a Diſſeiſin, *&c.*

was not given, becauſe the Defendant died; but the Writ is of little Effect, G
for that by the Death of the Defendant before Judgment the Writ is abated.

And if a Man will ſue an Attaint upon Recovery in an Aſſiſe, which Record of Aſſiſe is in the Treaſury, then he who bringeth the Attaint (*a*) ought to ſue a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certify the Record of Aſſiſe before the Juſtices, before the Attaint be ſued forth.

[243.] If a Man do recover Damage in an Aſſiſe of *Novel Diſſeiſin*, and before he A
hath Execution of the Damages the Record is ſent into the Treaſury; then he may ſue a *Certiorari* to the Treaſurer and Chamberlains to certify the Record of Recovery in the Aſſiſe before the King, that Execution may be awarded for the Damages.

And if a Man recover Lands and Damages in an Aſſiſe of Freſh Force, B
and the Defendant hath not any Thing within the City or Borough for to ſatisfy the Damages; then the Party may ſue a *Certiorari* to the Mayor or Bailiffs to certify the Record into the King's Bench, that he may have Execution of the Damages recovered.

If the King maketh certain Perſons Juſtices of Aſſiſe, &c. in one County, C
and afterwards at another Aſſiſes he maketh other Juſtices of the ſame County, a general *Certiorari* ſhall be ſued to the firſt Juſtices to certify all the Records of Aſſiſe and Juries which were taken in that County before the new Juſtices.

And in Aſſiſe of *Novel Diſſeiſin*, if the Verdict paſs for the Plaintiff, and D
before Judgment be given a new Commiſſion is to other Juſtices of the ſame County, the Party for whom the Verdict paſſed may ſue forth a *Certiorari* to the firſt Juſtices to remove the Record into the King's Bench, to have Judgment given there upon that Aſſiſe and Verdict paſt; or may have a *Certiorari* to the firſt Juſtices to ſend the Record before the new Juſtices, that they may give Judgment thereupon: And it behoveth to have another Writ unto the new Juſtices to receive the Record, and that they proceed to Judgment. And when the Record is removed after Verdict given before other Juſtices, and they delay to proceed to Judgment upon the Verdict, the Party for whom the Judgment ſhould be given may ſue forth a Writ directed to them, *That having received and ſeen the Record and Proceſs aforeſaid*, they proceed to Judgment, &c. And thereupon the Party may have an *Alias* and a *Pluries*, *Or ſignify Cauſe to us:* And if they will not do any Thing, whether he ſhall have an Attachment is a Queſtion; for there is a Statute made *A.* 3 *Ed.* 3. which willeth, that Commiſſioners in ſpecial Caſe limited by the Statute ſhall be puniſhed for their Miſdoings; but it ſeemeth it ſhall not be, if the Statute be not made, for that Cauſe only.

27 Aſſ. pl. 18. 2 R. 3. 9. Bro. Indictment 50. And *Anno* 27 *Ed.* 3. in Aſſiſe a Juſtice was indicted, for that he cauſed an E
Indictment, which was found to be but Treſpaſs, to be entred in Record as Felony, &c. And the ſame was adjudged a void Indictment, becauſe it was to make void a Record. But yet it ſeemeth he might be indicted for taking of Money, or for other Falſity, which doth not deſtroy and defeat the Record. *Quære.*

(*a*) *Note*; Here there ought to be the Record itſelf, and not a Tenor only. 39 *H.* 6. 4.

F And a Man may have a Writ to the ſame Juſtices before whom the Verdict paſſed, *&c.* to proceed to Judgment, as well as he ſhall have a Writ to other Juſtices before whom the Record is removed (*a*).

G If a Man in an Aſſiſe of *Novel Diſſeiſin*, or other Action real, before Juſtices in Eyre vouch one to Warranty, who preſently entreth into Warranty, and afterwards loſeth; the Plaintiff ſhall recover, and Tenant ſhall have Judgment to recover in Value againſt the Voucher: Now if he who recovered in Value will have Execution of the Lands recovered in Value, he ought to ſue a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certify the Record in Aſſiſe into the Chancery; and when it is there certified, the King ſhall ſend the (*b*) Record by *Mittimus* into the Common Pleas, and thereupon the Juſtices ſhall award a *Scire facias* againſt the Party againſt whom the Recovery was, to come and ſhew why Execution ſhould not be done of Lands in Value.

H And a Man may ſue a *Certiorari* directed to the Juſtices of Aſſiſe, to remove the Records of Aſſiſe into the Chancery, and alſo a Deed which is before them, *&c.* and afterwards he may ſue forth a Writ of *Mittimus* unto the new Juſtices of Aſſiſe of thoſe Records, and of the Deeds which remained before the other Juſtices.

I And if the Huſband and Wife ſue a Bond, which is made to the Wife, in the Common Pleas, and the Deed is there denied, for that they remain in the Keeping of the *Cuſtos Brevium*, and the Huſband dieth; the Wife may have a Writ out of the Chancery directed to the *Cuſtos Brevium* in the Common Pleas, that he deliver the Deed to the Wife, becauſe the Plea is determined by the Death of the Huſband.

K And when the Juſtices in Eyre come, and ſhall be in any County by the King's Commiſſion, then a Writ ſhall be ſent to the Juſtices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Juſtices in Eyre, to be determined before them: And if the Juſtices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ ſhall be ſent to the Juſtices in Eyre, to ſend thoſe Records and Pleas, which are not determined nor adjudged, into the Common Pleas again: And the Writ ſhall be ſuch:

(*a*) *Note*; If the Juſtice of *Niſi prius* die before the Day in Bank, after the Verdict taken, the Court may receive the Record by the Hands of the Clerk of Aſſiſe, without any *Certiorari* to the Executors of the Juſtice, and the Entry hereof ſhall be general: *Ad quem Diem hic vener' partes, & Juſticiarii ad Aſſiſas coram quib', &c. Miſerunt hic Recordum ſcript' in hæc verba, &c.* And admit that it be Error, yet this ſhall be received to be aſſigned for Error; for it is contrary to what the Court did as Judge; and though in ſome Caſes the Court ſhall give Faith to the Death of a Judge, as 2 *H.* 7. A Servant of an Attorney was received by a Judge who died in *Pais. Dyer* 163. But *Note*; If a Juſtice of *Niſi prius* be removed, *&c.* the *Certiorari* ſhall be to himſelf; and ſo if his Executors have the Record, the *Certiorari* ſhall be to them. See *Dyer* 439. 13 *H.* 7. 21.

(*b*) *Note*; A *Scire facias* lies on the Tenor before any Entry thereof on the Roll: And if the Tranſcript of a Fine comes in by *Mittimus*, at the Suit of one, and another has Cauſe to have Execution upon the ſame Fine, he ought to purſue the *Mittimus* to have Execution; for otherwiſe he cannot have it, although the Tenor was entred on the Roll before.

The King to his beloved and faithful S. *greeting: Whereas the Plea which was before our Juſtices of the Bench by our Writ between* S. *Demandant, and* I. *Tenant of one Meſſuage with the Appurtenances in* T. *in the County of* N. *together with the ſaid Writ, was ſent to be pleaded before you and your Companions, lately our Juſtices itinerant in the County aforeſaid, and that Plea for ſome certain Cauſes in the Eyre aforeſaid, remained undiſcuſſed, without this, that the ſame Plea was adjourned elſewhere to be pleaded, by which, on the Behalf of him the ſaid* S. *we are beſought that we will do him Juſtice in the Premiſſes; We, for that Cauſe thinking* [244.] *it to be expedient that our Juſtices of the Bench ſhould be certified upon the Record and Proceſs of the Plea aforeſaid before you and your ſaid Companions in the Eyre aforeſaid, command you, that you ſend without Delay, the Record and Proceſs aforeſaid, together with the ſaid Writ and all other Things touching them, to our ſaid Juſtices of the Bench under your Seal diſtinctly and openly, and this Writ, that thoſe being inſpected, further Proceſs may be in the ſaid Plea, according to the Law and Cuſtom of our Realm. Witneſs*, &c.

Br. Brief 414. Vide 22 H. 6. 15. 23 Aſſ. 14. Br. Brief 282. 40 Ed. 3. 32. Br. Brief 304.

And if an Aſſiſe of *Novel Diſſeiſin* be brought in the King's Bench, and the Defendant alledge and plead, that there is a Writ of a higher Nature depending in the Common Pleas for the ſame Land between the Plaintiff and Defendant; then if they be at Iſſue, whether there be ſuch a Writ depending or not, the Defendant ought to ſue a *Certiorari* out of the Chancery to the Juſtices of the Common Pleas, to remove and certify the Records into the Chancery; and upon the ſame certified, he ſhall have a Writ of *Mittimus* out of the Chancery to the Juſtices of the King's Bench; with which Writ the King ſhall ſend the Tenor of the Record which is there into the King's Bench: And the Writ of *Mittimus* ſhall be ſuch: A

The King to his beloved and faithful R. *of* W. *and his Companions, Juſtices aſſigned to hold Pleas before us, greeting: Whereas* R. P. *lately arrained a certain Aſſiſe of Novel Diſſeiſin before us at* Weſtminſter, *by our Writ againſt* B. *of Tenements in* A. *and two Meſſuages, three Plough-lands, twenty Acres of Meadow with the Appurtenances in the ſame Town put in View, and the ſaid* B. *in pleading in that Aſſiſe alledged that a Writ of an higher Nature then, and long before, was depending between the Parties aforeſaid, before our beloved and faithful* W. *and his Companions our Juſtices of the Bench, and hath vouched to warrant it, the Record and Proceſs thereof had before our ſaid Juſtices of the Bench, as we have received Information: We thinking it to be expedient and neceſſary that you be certified upon the Record and Proceſs aforeſaid had before our ſaid Juſtices of the Bench, ſend to you the Tenor thereof (which we cauſed to come before us in our Chancery) under the Foot of the Seal, commanding, that you having inſpected the Record and Proceſs aforeſaid, you further Cauſe to be done, that which of Right and according to the Law and Cuſtom of our Realm ought to be done. Witneſs*, &c.

And if a Man do recover in an Aſſiſe of *Novel Diſſeiſin* before Juſtices of Aſſiſe in the County, and before Execution ſued of the Damages, the Record is removed into the Chancery by *Certiorari*; he who recovered in the Aſſiſe may ſue forth a Writ of *Mittimus* to ſend the Record into the King's Bench, commanding them for to proceed, and to award Execution; and the Writ is ſuch: B

The King to his beloved and faithful E. *and his Companions our Juſtices aſſigned to hold Pleas before us, greeting: Whereas* I. *by the Recognizance of an Aſſiſe of*

Novel Diſſeiſin, which W. *arraigned before* B. *and his Companions lately Juſtices of Lord* Edward *ſome time King of* England *our Grandfather, aſſigned to take the Aſſiſes,* &c. *againſt* R. *and others,* &c. *of Tenements in* T. *recovered his Seiſin of one Meſſuage with the Appurtenances in* D. *by the Conſideration of the ſaid Court, and his Damages, which were taxed to ten Pounds, as by the Record and Proceſs of the Aſſiſe aforeſaid, which we have cauſed to come before us for certain Cauſes, more fully appears; and Execution of the Judgment as to the Damages to be recovered, yet remains to be done, as we are given to underſtand on the Behalf of him the ſaid* I. *We therefore willing that Execution of the ſaid Judgment be duly demanded, ſend to you the Record and Proceſs aforeſaid under the Foot of our Seal; commanding you, that having ſeen the Record and Proceſs aforeſaid, you further cauſe to be done as to the Execution of the ſaid Judgment, that which of Right and according to the Law and Cuſtom of our Realm ought to be done. Witneſs,* &c.

C And if a Man recover Lands by Aſſiſe of *Novel Diſſeiſin* before Juſtices of Aſſiſe, and the Defendant hath a Writ of *Warrantia Chartæ* depending in the Common Pleas, the Party may ſue a *Certiorari* to remove the Record of the Aſſiſe in Chancery, and thereupon have a *Mittimus* of the Record of Aſſiſe to the Juſtices of the Common Pleas, and in the End of the Writ ſhall be ſaid, *That having inſpected theſe you may be able more ſafely to proceed in the Plea of Warranty of Charters aforeſaid, according to the Law,* &c.

D And in Aſſiſe of *Novel Diſſeiſin*, if the Defendant plead two or three Recoveries in Aſſiſe before other Juſtices, which Record is in the Treaſury, *&c.* now if the Record be denied, for which he ſueth a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certify the Records at a certain Day into the Chancery; if they at the Day certify any Records, but do not certify that there are other Rolls of the ſame Juſtices remaining in the Treaſury in the *Tower* of *London*, ſo as that they have not made a full Search of the Records; then the King ſhall ſend to the Juſtices of Aſſiſe his Writ, reciting the Matter, commanding them for to continue that Aſſiſe until another Day, ſo as the Defendant be not damnified by failing of the Record; and the ſame ſeemeth to be reaſonable.

And if a Man be bound in a Statute-Staple to pay a certain Sum of Money at a Day certain, after the Day the Party who hath the Statute, may come to the Mayor of the Staple and ſhew him the ſame, and pray him to certify the ſame into the Chancery; and if the Mayor will not ſo do, then the Party who hath the Obligation may come into the Chancery, and ſhew the ſame there, and pray a *Certiorari* to the Mayor to certify the Inrolment of the Statute: And if the Mayor do return, that he hath twice or oftner, certified the ſame before that Time, as appeareth by the Inrolment made by the Mayor, if there appear no ſuch Certificate upon Record in the Chancery, then he who hath [245.] the Bond of the Statute may ſue forth a new *Certiorari* to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certify the Inrolment of the Statute which is before him; and upon the ſame he may have an *Alias* and a *Pluries* againſt the Mayor, if he will not certify the ſame, and alſo an Attachment againſt the Mayor, directed to the Sheriff, *&c.*

Vide 10 Eliz. Dyer 274, 275.

But ſee Lambert 411. The Uſe at this Day is, to award a Subpœna to the Commiſſ. 37 H. 6. 30. Marle.

A The Writ of *Certiorari* is an (*a*) original Writ, and iſſueth ſometimes out of the Chancery, and ſometimes out of the King's Bench, and lieth where the King would be certified of any Record which is in the Treaſury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commiſſioners, or before the Eſcheator; then the King may ſend that Writ to any of the ſaid Courts or Offices, to certify ſuch Record before him *in Banco*, or in the Chancery, or before other Juſtices, where the King pleaſeth to have the ſame certified: And he or they to whom or who the *Certiorari* is directed, ought to ſend the ſame Record according to the Tenor of the Writ, and as the Writ doth command him; and if he or they fail ſo to do, then an *Alias* ſhall be awarded, and afterwards a *Pluries*, *Vel cauſam nobis ſignifices*, and after an Attachment, if a good Cauſe be not returned upon the *Pluries*, wherefore they do not ſend the Record.

B Alſo the King might by ſuch Writ of *Certiorari* ſend for the Tenor of the Record, or for the Tenor of the Tenor of the Record, at his Election; and thoſe Writs ought for to be obeyed, and the Records ſent, as the Writ commandeth them to do; and the Form of ſome of thoſe Writs here followeth:

The King to his beloved and faithful R. *greeting: Becauſe for ſome certain Cauſes we will be certified upon the Record and Proceſs of Outlawry againſt* I. *in the County of* T. *pronounced before you and your Companions our Juſtices aſſigned to hear and determine divers Felonies in the County aforeſaid: We command you, that*, &c. *you ſend the Tenor of the Record and Proceſs aforeſaid*; or thus, *That without Delay you ſend the Tenor of the Record and Proceſs of Outlawry aforeſaid, with all Things touching them, to us in our Chancery under your Seal diſtinctly and openly, and this Writ. Witneſs*, &c.

C And to certify an Indictment taken before the Juſtices in Eyre, the Form is ſuch:

The King, &c. *Becauſe upon the Preſentment made before you and your Companions our Juſtices itinerant in the County of* Lincoln, *of the Death of* A. *whereupon* B. *taken and detained in our Priſon of* N. *is ſuſpected, and alſo for ſome certain Cauſes we will be certified upon the Inquiſition thereof before you made*; *We command you, that without Delay you ſend the Inrolment of the Preſentment and Inquiſition aforeſaid to us, under your Seal diſtinctly and openly, and this Writ. Witneſs*, &c.

D And there is another Form of Writ directed to the Coroners:

34 Aſſ. 40. Br. Certiora. 9. the Writ was awarded to the Executors of the Coroner. Vi. 36 H. 6. 24. for Certiorari to the Coroners, Vi. 2 Eliz. Dyer 223. Procter's Caſe.

The King to his Coroners in the County of Lincoln, *greeting: Becauſe for ſome certain Cauſes we will be certified upon the Record and Proceſs of a certain Appeal, which* W. *lately an Approver deceaſed, made againſt* S. *of a certain Robbery which the ſame* W. *and* B. *in your County*, &c. *one after the other ſaid was done*; *We command you, that*, &c. *you ſend to us the Record and Proceſs of the ſame Appeal with all Things touching them, under your Seals*, &c. And that Writ lieth where a Man before Juſtices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver

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(*a*) A *Certiorari* out of *B. R.* was to remove the Record of the Foot of a Fine in *C. B.* and it was not allowed, but a *Certiorari* out of the Chancery for the Tenor was, and then it was ſent into *B. R.* by *Mittimus*. *Dyer* 275.

dieth; the King may write unto the Coroner to ſend him the Record of the Approvement.

E And another Form of *Certiorari* to the Mayor and Sheriffs of *London:*

The King to the Mayor and Sheriffs of London, *greeting: Becauſe certain Buſineſſes by Appeals, Indictments and Attachments before you in the ſaid City of* London *entred, not yet determined, and certain Inquiſitions made in the ſaid City, were returned, the Inquiſitions of which Buſineſſes, and the Records and Proceſs, remain in your Power, as it is ſaid, and all which we will to be expedited and finally determined by our beloved and faithful* B. C. *and* D. *our Juſtices aſſigned to hear and determine divers Treſpaſſes committed in the ſaid City; We command you that*, &c. *you ſend the aforeſaid Records and Proceſs, with all Things touching them, to the ſaid Juſtices under your Seals*, &c.

F And if the King by Virtue of any Writ (*a*) of *Certiorari* remove any Record before any of the Juſtices, he may afterwards ſend for that Record, and remove the ſame before himſelf, or other Juſtices, at his Election; and then the Writ is ſuch:

The King, &c. *Becauſe for ſome certain Cauſes we will be certified upon the Record and Proceſs of a certain Inquiſition taken before our beloved and faithful* W. *and* P. *our Juſtices aſſigned to deliver our Gaol of* N. *for the Death of* E. *whereof* C. *for the ſaid Death is* † *ſuſpected, as it is ſaid, which ſaid Record and Proceſs we cauſed to come before you for certain Cauſes, which remain in your Power, as it is ſaid; We command you, that you ſend the ſaid Record and Proceſs, with all Things touching them, to us under your Seals diſtinctly*, &c.

G And when the King would be certified of an Outlawry in the County, then the *Certiorari* ſhall be as well to the Sheriff, as to the (*b*) Coroners of the County, to certify the ſame. But if a Man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his Condemnation; if he will ſue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery to certify the Record of the Condemnation, which ſhall be ſuch:

(*a*) And this Writ being delivered to the Juſtices, ſeems to ſuſpend their Power, ſo that if they arraign the Party upon an Indictment afterwards, it is erroneous, 21 *H.* 6. 28. alſo after the Return, although the Indictment be not removed, they cannot proceed, and if they do, it is Error. 6 *H.* 7. 16. *per Keble.* See *Dyer* 245.

† Suſpected; ſee *Spelman Gloſſ. verb. Rectatus*, i. e. *vocatur in jus ut Rectum faciat.*

(*b*) See it directed to the Coroners only. 9 *H.* 4. 7. 36 *H.* 6. 13. *Dyer* 223. *viz.* where there is a Default in the Sheriff in not returning, or miſreturning the Exigent. See the Writ to the Sheriff and Coroners. *Regiſter* 284. 38 *Ed.* 3. 14. *&* *alibi.* For although the Judgment is rendred by the Coroners, as 21 *H.* 7. 33. yet the Record is in Cuſtody of the Sheriff, and the Coroners have only a ſhort Note or Memorandum of it, *Dyer* 223. and ſee in *London* a Writ to the Sheriffs only. *Dyer* 318.

See on a Record of Outlawry certified by a *Certiorari*, a Charter of Pardon, and a *Scire facias* iſſued, 9 *H.* 4. 7. and the Sheriff ſhall be amerced, if it be returned on the Exigent, *de 4to Exact'* only, 36 *H.* 6. 13. but the Party ſhall not be diſabled. 21 *Aſſ.* 49. If a *Capias utlagat'* ſhall be awarded, *quære* 38 *Ed.* 3. 14. the Goods of the Party ſeized as forfeited. *Dyer* 221. *Procter*'s Caſe, *contr. Co. Lit.* 288. See the Judgment in *Procter*'s Caſe; that the *Certiorari* ſhall be granted to the Coroners for the Outlawry, either for haſtening the Sheriff to return the Exigent, or to have him amerced for his Concealment, or to falſify his Return, as if he returns *4to Exact'*, where it was *5to Exact'*, and is not to diſable the Party; for till the Exigent, which is the Sheriff's Warrant, be returned, there is no Forfeiture, *contr. Dyer* 318. *Putten* and *Haines*'s Caſe.

The King to his beloved and faithful I. *his Chief Juſtice*, &c. *greeting: Whereas* E. *was convicted before you of a certain Treſpaſs done to* F. *with Force and Arms, and becauſe he came not before us to ſatisfy to us for his Ranſom, which belongs to us in this Behalf, and to the ſaid* F. *for his Damages adjudged in this Behalf, was put in Exigent to be outlawed, and upon that Occaſion was afterwards outlawed, which ſaid Outlawry is now returned before you, as we have received Information*; [246.] *and he the ſaid* E. *hath beſought us, that whereas he hath already ſatisfied the ſaid* F. *of his Damages aforeſaid, we would graciouſly pardon him the Outlawry aforeſaid*; *We for that Cauſe willing to be certified upon the Record and Proceſs of Outlawry aforeſaid, and whether he the ſaid* E. *hath ſatisfied the ſaid* F. *of the Damages aforeſaid (as it is ſaid) or not, command you, that you render us more certain touching the Premiſſes under your Seal diſtinctly and openly*, &c.

A And if a Man be indicted before Juſtices of Gaol Delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he ſhall be troubled by reaſon of the ſame Indictment, he may ſue forth a *Certiorari* to remove that Record and Proceſs of the Inquiſition, *&c.* into the Chancery, *&c.*

14 H. 7. 15. 15 H. 7. 5. 36 H. 6. 23. 39 H. 6. 34.

B And if a Man do recover Debt or Damages before Juſtices of *Oyer* and *Terminer*, and hath not Execution, he may remove the Record and the Proceſs into the King's Bench, and there ſue Execution, and have a *Scire facias* upon the Record, *&c.*

34 H. 6. 47. cont. 4 Ed. 4. 39. 33 H. 6. 48. Danby. 47 Ed. 3. Execut. 41. 2 Cro. 143.

And if a Man do recover Damages in an Action of Treſpaſs before Juſtices of *Oyer* and *Terminer*, and hath the Party in Execution by reaſon of the Judgment; if the Party in Execution dieth in Priſon, he who recovered may ſue a *Certiorari* to the Juſtices to remove the Record into the King's Bench, that the Juſtices there may award Execution, as the Law requireth in ſuch Caſe. And I think, in that Caſe, that the Party ſhall have Execution by *Elegit*, or by *Scire facias*; for it ſeemeth not to be reaſonable, that the Death of him who dieth in Priſon ſhould be a Satisfaction to the Party. *Tamen quære*, for the ſame is a Doubt.

Poſt. 247.

C If a Man be arraigned of Murder, and found Guilty *ſe defendendo*, for which he is bailed or committed to Priſon, he may have a *Certiorari* to remove the Record into the Chancery, that he may ſue forth a Pardon thereupon according to the Courſe of the Law, *&c.*

D If a Man recover Damages in Treſpaſs in the King's Bench, and hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is diſſeiſed by the other, for which he bringeth an Aſſiſe before the Juſtices of Aſſiſe; he who bringeth the Aſſiſe ought to have a *Certiorari* to the Chief Juſtice of the King's Bench to certify the Record and the Proceedings to Judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if need be, to the Juſtices of Aſſiſe.

E And if a Man recover by Aſſiſe of Novel Diſſeiſin, and the Party will ſue an Attaint in the Common Pleas or in the King's Bench, he ought to ſue a *Certiorari* to the Juſtices of Aſſiſe to remove the Record in the King's Bench, or into the Chancery, *&c.* that he might ſend the ſame before the Juſtices before whom the Attaint is ſued, *&c.*

And

F And it appeareth by the Regiſter, in the Title [*Certiorari*] that if falſe Judgment be given before the Steward and Marſhal of the King's Houſe, upon a Plaint there ſued, that the Party may ſue an Attaint by Writ before the Steward and Marſhal to attaint that Jury, *&c.* and that the King may ſend a *Certiorari* to certify the Record into the Chancery, which ſhall be directed to the Steward and Marſhal of the King's Houſe; but the Record ſhall be certified under the Seal of the Steward only, as appeareth by the Words of the Writ, *&c.*

G There is another Writ of *Certiorari* directed to the Treaſurer and Barons of the Exchequer to certify the King of the Debt which *I.* oweth unto him, and of the Debt which the Anceſtor of the ſaid *I.* owed the King, and which are clear Debts, and to certify the ſame without Delay under the Exchequer Seal, and not into the Chancery, nor into the King's Bench.

H There is another *Certiorari* directed to the Juſtices of Gaol Delivery to certify the Record and Proceedings upon an Indictment of Murder, and Acquittal thereupon, into the Chancery, *&c.*

I There is another *Certiorari* to the Juſtices of Peace to certify into the Chancery the Tenor of the Records and Proceſs of Outlawry of ſeveral Perſons returned before them.

K There is another Writ of *Certiorari* directed to the Steward and Marſhal of the King's Houſe to certify under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marſhal, which the King would have to be determined only before him in the King's Bench.

L There is another Writ of *Certiorari* to the Mayor and Sheriffs of *York* to certify the Tenor of the Record and Proceedings in an Aſſiſe of Freſh Force ſued before them in the ſame City without Writ, and to certify the Tenor of the Record and Proceedings in the Chancery.

M There is another Writ of *Certiorari* to the Biſhop of *Oxford* to certify into the Chancery how many Perſons were admitted, inſtituted and inducted into ſuch a Church, ſince the Statute of King *Edward* IV. until this Time, and at whoſe Preſentation, and by what Title, and in what Manner.

N There is another Writ of *Certiorari* to the *Cuſtos Brevium* to certify the King in the Chancery the Tenor of the original and judicial Writs, and the Warrants of Attorney which are in his Cuſtody concerning ſuch an Action or Suit.

O And another Writ directed to the Treaſurer and Chamberlains of the Exchequer to certify the King in the Chancery the Record and Proceedings of a Writ of *Quo Warranto* ſued by the King's Anceſtor, King *Edward* I. againſt the Abbot of *Weſtminſter*, for certain Liberties claimed by the ſaid Abbot, *&c.* [247.]

A And another Writ of *Certiorari* to the Commiſſioners of Sewers to certify the King in the Chancery at a certain Day all the Preſentments before them made againſt ſuch a Perſon, *&c.*

B And a Writ of *Certiorari* directed to the Chief Juſtice of the Common Pleas to certify the Tenor of a Record and Proceedings of Utlagary againſt ſuch a one in *London*, remaining in *Middleſex* before the Juſtices of the Common Pleas, and to certify the ſame into the Chancery.

And if a Baron, who is a Peer of the Realm, be ſued in the Common Pleas, and Proceſs be awarded againſt him by *Capias* or *Exigent*, then he may ſue a *Certiorari* in the Chancery directed to the Juſtices of the Common Pleas or King's Bench, teſtifying that he is a Peer of the Realm, commanding them to award ſuch Proceſs againſt him as they ought to do againſt a Peer of the Realm; and the Writ is ſuch: C

The King to his Juſtices of the Bench, greeting: We command you, if G. T. *Knight, be impleaded before you at the Suit of any Perſon by an Action perſonal, you cauſe to be made ſuch Proceſs (and no other, againſt him in the ſaid Action) as againſt Lords, great Men, Earls or Barons of our Realm of* England, *who ought to come by Summons to our Parliaments, or any of them, according to the Law and Cuſtom of our Realm of* England *ought to be made, becauſe the ſaid* G. T. *one of the Barons of our ſaid Realm, coming to our Parliaments by our Royal Summons, is recorded; And this we command you; and make known to others whom it may concern,* &c. *Witneſs,* &c.

And if a Man recover Damages and Coſts in an Aſſiſe of Novel Diſſeiſin, he may ſue a *Certiorari* to remove the Record into the Chancery directed to the Juſtices of the Aſſiſe, to the Intent that the King may ſend the ſame to any of his Courts, that he who recovereth may ſue Execution of the Damages recovered; and upon that Record ſent into the King's Bench, he ſhall ſend that Record into the Common Pleas by Writ of *Mittimus* directed to the Juſtices there, that they do as they ought for to do according to the Law, to make the Damages to be levied. D

There is another Form of *Certiorari* by theſe Words: E

The King to the Sheriff, &c. *We willing for certain Cauſes to be certified upon the Tenor of the Record and Proceſs of Outlawry againſt* W. *of* B. *of the County of* N. *Huſbandman in the ſame County:* Or thus; *In our Huſting of* London *proclaimed, and certified before the Juſtices of him the ſaid King of the Bench, which ſaid Record and Proceſs the ſame King for certain Cauſes made to be certified before him, as it is ſaid, and whether he the ſaid* W. *had rendred himſelf to the Priſon of the* Marſhalſea *of him the King before himſelf on the Occaſion aforeſaid, or not; therefore let the Tenor of the Record and Proceſs of Outlawry aforeſaid, and alſo the Certificate of the Render with this Bill, be ſent diſtinctly and openly without Delay to the ſaid King in his Chancery, under the Seals of* I. F. *his Chief Juſtice aſſigned to hold Pleas before the King himſelf. Witneſs the King himſelf at* Weſtminſter *the* 12*th Day of* May *in the* 30*th Year of his Reign.*

Ant. 246. E. And by that it appeareth, although the Record be remaining *in Banco*, yet the King may ſend to remove it into the Chancery.

And if a Man be arraigned of Murder, and it is found that he killed the Party *ſe defendendo*, he ought for to ſue a *Certiorari* to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the Form of the Pardon doth appear in the Regiſter, *fol.* 287, 288. F

And if a Man be attainted in Aſſiſe of Novel Diſſeiſin before the Juſtices of Aſſiſe, of a Diſſeiſin with Force, and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Juſtices of Aſſiſe to certify the King in his Chancery the Tenor of the Record of the Aſſiſe, and alſo another Writ to the Juſtices G to certify the King in his Chancery, whether the Defendant in the Aſſiſe hath yielded himſelf to Priſon, and hath ſatisfied the Party his Damages. And if the ſame be ſo certified in the Chancery, then upon that Certificate he ſhall have his Pardon of the Outlawry, and the Form of the Charter of Pardon appeareth in the Regiſter, 288.

And if a Man be condemned in the Common Pleas in Debt, and Outlawry upon the ſame; then, before he ſhall have his Pardon, he ought for to yield himſelf to the Priſon of the *Fleet*, and ſatisfy the Party, and the Record of his Condemnation and of the Satisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he ſhall have his Pardon, and that is by the Statute of 5 *Ed.* 3. *cap.* 12.

And if a Man be outlawed ſeverally at the Suit of three ſeveral Perſons in ſeveral Actions in which he was condemned, he ought to ſue a *Certiorari* to remove the Tenor of thoſe Records and Proceſs into the Chancery; and alſo to have a *Certiorari* to the Juſtices of the Common Pleas, if the Suit be there, to certify the King in Chancery, whether he hath yielded himſelf to the Priſon of the *Fleet*, and hath ſatisfied the Parties; and when the Chief Juſtice hath certified the ſame into the Chancery, then he ſhall have his Pardon for the Outlawries, and not before; and the Form of the Pardon appears in the Regiſter, 288.

H There is another *Certiorari* to the Eſcheator to certify the Manner and Cauſe of taking of Lands into the King's Hands after the Death of one; and the Writ is ſuch:

The King to his Eſcheator, &c. *greeting: Becauſe for ſome certain Cauſes we will be certified upon the Manner and Cauſe of taking of the Lands and Tenements which were* I.'s *deceaſed, in* B. *in your Bailiwick, ſeized by you into our Hand, as it is ſaid; We command you, that without Delay you render us in our Chancery more certain upon the Manner and Cauſe aboveſaid, under your Seal diſtinctly and openly, ſending to us this Writ. Witneſs*, &c.

But note, that it is enacted by Statute, that if the Eſcheator find any Office of any Lands or Tenements for the King, that he ought for to return the Office into the Chancery or into the Exchequer, within a Month after the finding thereof, upon Pain of twenty Pounds payable to the King, and to him that will ſue for the ſame; and that Statute was made *Anno* 8 *H.* 6. *cap.* 26. [248.]

A There is another *Certiorari* directed to the Eſcheator to certify the King in Chancery, at his Peril, the Value of the Knights Fees and of the Advowſons which *I.* had, who is dead, who held of the King the Day of his Death *in Capite*; and the Writ is ſuch:

The King to his Eſcheator, &c. *We willing for certain Cauſes to be certified upon the true Value of the Knights Fees and Advowſons of Churches which were* I.'s *deceaſed, who held of us in Chief in your Bailiwick, on the Day when he died, and which, by reaſon of the Death of him the ſaid* I. *are taken into our Hand; We command you, that by the Oath of*, &c. *you diligently cauſe the Fees and Advowſons aforeſaid to be extended*, viz. *how much they are worth in all Iſſues according to the Value thereof; and ſend that Extent without Delay diſtinctly and openly made, to us under your Seal and the Seals of them by whom the ſame was made, and this Writ. Witneſs*, &c.

And if a Lunatick or a Madman doth kill a Man, or if a Man doth kill a Man by Misfortune, or if an Infant of eight Years old doth kill a Man; if they will ſue a Pardon for the ſame, the Uſe is to ſue a *Certiorari* to remove the Tenor of the Record and Proceſs into the Chancery, and thereupon to have a Pardon; and in the Regiſter do appear ſeveral Forms of ſuch *Certiorari's* to remove ſuch Records, which a Man may ſee there more fully, and therefore they are not here mentioned. B

Writ of Forcible Entry upon the Statute of 8 H. 6.

THE Writ upon the Statute of 8 *H.* 6. of Forcible Entry lies where a Man is diſſeiſed or put out of his Lands or (*a*) Tenements with Force, whereof he is ſeiſed as of an Eſtate of Freehold in Fee-tail, or in Fee, or for Life; he may ſue forth that Writ of Forcible Entry upon that Statute: Or if he be diſſeiſed or put out of his Lands and Tenements peaceably, and afterwards the Diſſeiſor, or he who ouſteth him, doth keep and detain the Lands and Tenements with Force, then he who is put out may ſue that Writ, if he will, and in that Writ he ſhall recover his Damages and his Coſts treble for
2 H. 6. 47. what he is found (*b*) damnified by the Jury, and what he hath expended in that Suit. C

6 H. 6. 86. If a Man enter into any Lands and Tenements, and diſſeiſeth another with
3 Ed. 4. 19. Force, and keepeth the Lands and Tenements and detaineth them with Force;
6 H. 7. 12. then he who is ouſted and diſſeiſed may have that Writ, although the Words
14 H. 6. 16.
10 Ed. 4. 12. of the Statute are in the Disjunctive, *ſcil'*, Where a Man is diſſeiſed with Force, or where a Man doth diſſeiſe one peaceably, and afterwards doth keep the Lands with Force; becauſe the Intent of the Makers of the Statute was to puniſh ſuch Force, whether it were upon the Entry and Diſſeiſin, or upon the Keeping and Detaining of the Lands, &c. D

8 Ed. 4. 19. And note, That none can have or maintain that Action, but he who hath
1 H. 7. 12. a Freehold in the Lands or Tenements at the leaſt; for Tenant for Years can-
4 Ed. 4. 18.
3 Ed. 4. 4. not maintain the Action, becauſe the Words of the Writ are, *Expulit & diſ-*
37 H. 6. 31. *ſeiſivit* (*c*); and Tenant for Years cannot be diſſeiſed, &c. And the Form of
cont. the Writ is ſuch: E

The King to the Sheriff, &c. *greeting: If* A. *ſhall make you ſecure*, &c. *then put* B. *&c. to anſwer as well to us, as to the ſaid* A. *wherefore, whereas in the Statute ſet forth in the Parliament held at* Weſtminſter *in the eighth Year of the Reign of King* Henry *the Sixth lately King of* England, *our Progenitor, amongſt other Things it is contained, That if any Perſon be put out or diſſeiſed of any Lands or Tenements in a forcible Manner, or put out peaceably, and after holden out with ſtrong Hand, or after ſuch Entry any Feoffment or Diſcontinuance in any* F

(*a*) Expulſed of his Rent. 20 *H.* 6. 11. *vide ibid.* 47.

(*b*) See accordingly 14 *H.* 6. 32. 12 *Ed.* 4. 1. and yet the Statute ſpeaks only of Damages.

(*c*) Yet *Note*; The Words in the Statute are in the Disjunctive, *viz. Expulſe* ou *diſſeiſe.* See *Bro. Acc'on ſur Stat.* 17. And *quære* if a Leſſor may have this Writ, becauſe he is not expulſed. *Dyer* 142.

wiſe thereof be made, to defraud and take away the Right of the Poſſeſſor, that the Party aggrieved in this Behalf ſhall have Aſſiſe of Novel Diſſeiſin or a Writ of Treſpaſs againſt ſuch Diſſeiſor; and if the Party aggrieved ſhall recover by Aſſiſe or Action of Treſpaſs, and it ſhall be found by Verdict, or in other Manner by due Form of Law, that the Party Defendant entred with Force into the Lands and Tenements, or them after his Entry did hold with Force, that the Plaintiff ſhall recover his treble Damages againſt the Defendant, and moreover that he make Fine and Ranſom to us: The aforeſaid B. *hath forcibly put out and diſſeiſed the aforeſaid* A. *of his Freehold in* B. *and him ſo put out and diſſeiſed, keeps out of the ſame, in Contempt of us, and to the great Damage and Grievance of him the ſaid* A. *and againſt the Form of the Statute aforeſaid, and againſt our Peace: And have there the Names of the Pledges and this Writ. Witneſs,* &c.

G And the Proceſs in that Writ is Attachment and Diſtreſs, and Proceſs of Utlagary, *&c.*

H If a Man entereth with Force into Lands and Tenements to which he hath 15 H. 7. 17, 18.
Title and Right of Entry, and put the Tenant of the Freehold out of thoſe 9 H. 6. 19.
Lands or Tenements; now he who is ſo put out with Force ſhall not maintain an (*a*) Action of Forcible Entry againſt him who had Title or Right of Entry, becauſe that that Entry is not any Diſſeiſin of him; but he may (*b*) indict him for his entering by Force, and by this Indictment he ſhall be reſtored to his Poſſeſſion again; and that is by the Statute of 8 *H.* 6. *c.* 9. [249.]

A (*c*) And in this Action of Forcible Entry the Plaintiff ſhall recover treble Damages, as well for the Occupying of the Lands, as for the firſt Entry therein.

B And a Man may have a Forcible Entry of Rent, as well as of Lands.

And if a Man entereth and diſſeiſeth another with Force, and afterwards the
C Diſſeiſee re-entereth again; yet the Diſſeiſee may bring his Action of Forcible
Entry, and recover his treble Damages, although he be ſeiſed of the Land 23 H. 8. f. 5.
at the Time of the Action brought; but if a Man continueth three Years in peaceable Poſſeſſion without Interruption, then he may hold the Lands with Force, and ſhall not be puniſhed for that Force; and by the ſame Statute.

And in the Writ of Forcible Entry the Defendant may plead Not guilty, and it ſhall be a good Plea; but if the Defendant doth plead Matter in Bar, yet he ought in the End of his Plea in Bar to traverſe the Entry with Force, which is alledged; as to ſay, *Abſque hoc* that he did enter with Force, *&c.* but yet the Demandant or Plaintiff ought to anſwer the ſpecial Matter alledged in the Bar, without anſwering to the Traverſe with Force, *&c.* (*d*).

(*a*) *Viz.* He ſhall not maintain it on the Stat. *R.* 2. See 9 *H.* 6. 19. but the Party ſhall make Fine to the King for his Forcible Entry. See 31 *H.* 6. 39. (17 *H.* 7. 17.) That if the Title be found for the Plaintiff or Defendant, they ſhall make Fine, *&c.* *Vide poſt.* 249. D.

(*b*) *Note;* On an Indictment of Forcible Entry found before Juſtices of Peace, and removed hither on the Statutes 5 *Eliz.* and 15 *R.* 2. The Party pleads, as to the Entry with Force, Not guilty, and he was forced to anſwer to the Entry wherefore he juſtified the Entry. 7 *H.* 6. 13.

(*c*) See accordant *Dyer* 141. And *Note*; He who is ſo reſtored cannot maintain the Poſſeſſion with Force, although he has had a peaceable Poſſeſſion for three Years before the Expulſion. For the Poſſeſſion is interrupted. See *Dyer* 187. None may grant Reſtitution but thoſe Juſtices before whom the Force is found, and the Writ ſhall be under the *Teſte* of one of them, and then no other Juſtices but thoſe of *B. R.* can grant a *Superſedeas.*

(*d*) See where he maintained the Entry with Force, by Chacement. 9 *H.* 6. 19. 21 *H.* 6. 39.

17 H. 7. 17. And if the ſpecial Matter alledged in the Bar be found for the Defendant, he ſhall be excuſed, and the Force ſhall (*a*) not be inquired of; and if it be found with the Plaintiff, and againſt the Defendant, the Defendant ſhall be attainted of the Force, and ſhall pay treble Damages and Coſts without Inquiry of the Force; and the ſame is the Uſage at this Day. And one Joint-tenant or Tenant in Common may maintain this Action againſt his Companion, if he be put out with Force, *&c.* E

And if a Man do enter with Force, and doth detain with Force any Lands or Tenements, the Party may have his Action upon the Statute of *Northampton*, made *Anno* 2 *Ed.* 3. *cap.* 3. and the Writ ſhall be ſuch: F

The King to the Sheriff, &c. *Becauſe we are given to underſtand, that a great many Malefactors and Diſturbers of our Peace, in unlawful Aſſemblies gathered together, armed and arrayed in a warlike Manner at* C. *have gone to enter the Cloſe and Houſes of certain of our liege Subjects there by Force and armed Power, and for this Purpoſe have agreed together to take, and prepare and intend to carry away the Goods, Rents and Revenues, and other their Goods whatſoever forth coming of their Poſſeſſions whatſoever, in Contempt of us, and to the manifeſt Terror and Diſturbance of certain of our People there, and againſt the Form of the Statute at* Northampton *ſet forth, of not carrying Arms againſt the Peace of Lord* Edward *the Third lately King of* England, *our Progenitor, and againſt our Peace: We willing the ſaid Statute to be inviolably obſerved, and willing the Breakers thereof to be chaſtiſed and puniſhed according to the Force and Effect of the ſame Statute, command you, that at the Town of* C. *and elſewhere in your County, where it ſhall be neceſſary, you cauſe it publickly to be proclaimed, and on our Part firmly to be prohibited, that no one, of whatever State or Condition he ſhall be, there go armed againſt our Peace and the Form of the ſaid Statute, nor cauſe any armed Power, or do any other Thing there or elſewhere, by which our Peace or the ſaid Statute be hurt, or our People may be terrified, diſturbed or in any Manner unduly aggrieved, upon Pain of the Loſs of their Arms and Impriſonment of their Bodies at our Will, as in the ſaid Statute it is more fully contained; and all thoſe whom, after and againſt the Proclamation and Prohibition aforeſaid, you ſhall find doing contrary, or by Inquiſition (by you in due Manner and Form to be taken) ſhall be found to have done, together with their Arms and Armour found with them, cauſe to be arreſted and taken, and the Bodies of ſuch arreſted Perſons to be ſafely kept in our Priſon, until you ſhall have other Matter in Command from us for their Delivery, and their Arms and Armour aforeſaid to be appraiſed, and anſwer to us thereof; but without Delay render us more certain in our Chancery diſtinctly and openly under your Seal, of the Names of the ſaid arreſted Perſons and of their Arms and Armour, and what and of what Kind they are, and of the Price or of the true Value thereof, and of your whole doing in this Behalf, ſending to us this Writ. Witneſs*, &c.

(*a*) And ſo it is on an Indictment of Forcible Entry. 7 *H.* 6. 13. *Vide contr.* where he pleads *Non eſt ingreſſus contra formam Statuti.* 1 *H.* 7. 19. 15 *H.* 7. 17.

Writ of Mainpriſe.

G THE Writ of Mainpriſe lieth properly where a Man is taken for Suſpicion of Felony, or indicted of Felony, for the which Thing by the Law he is bailable, and he offereth ſufficient Sureties unto the Sheriff or others who have Authority to bail him, and he or they do refuſe for to let him to Bail; then he who is kept in Priſon may ſue forth ſuch Writ:

The King to the Sheriff, &c. *It is ſhewed to us on the Behalf of* R. *taken and detained in our Gaol of* Glouceſter, *for a certain Theft of a certain Horſe, committed at* S. *as it is ſaid, whereof he is indicted before you by a certain Inqueſt of your Office, as it is ſaid, that although he hath ſeveral Times offered to you ſufficient Mainpernors who will be Mainpriſe for him, according to the Form of the Statute ſome time ſince ſet forth at* Weſtminſter, *in which it is contained, that Perſons indicted of ſuch Thefts before Sheriffs and Bailiffs by Inqueſt taken of their Offices are repleviſable, yet ſo long as they are of good Fame; nevertheleſs you have hitherto delayed and yet do delay to receive thoſe Mainpernors from the ſaid* R. *and to deliver him by ſuch Mainpriſe from the Gaol aforeſaid, to the great Expence and Grievance of him the ſaid* R. *and the manifeſt Peril of his Life, and againſt the Form of the Statute aforeſaid; and becauſe we will not that he the ſaid* R. *be longer detained in the ſaid Priſon againſt the Form of the* [250.] *Statute aforeſaid, We command you, that if he the ſaid* R. *is of good Fame, and was indicted by Inqueſt taken before you of your Office, of the Theft aforeſaid, as before is ſaid, and is detained in the ſaid Priſon for the ſame Theft, and upon no other Occaſion, and will find you ſufficient Mainpernors* (*a*) *who will be Mainpriſe to have him before our Juſtices aſſigned or to be aſſigned to deliver our ſaid Gaol, at their next coming to deliver that Gaol, to ſtand to Right touching the ſaid Theft, according to the Law and Cuſtom of our Realm of* England, *then in the mean time cauſe him the ſaid* A. *to be delivered from the ſaid Priſon, by the Mainpriſe aboveſaid, according to the Form of the Statute aforeſaid; and have there the Names of the Mainpernors and this Writ. Witneſs*, &c.

A But note, That it is ouſted by the Statute made *Anno* 28 *Ed.* 3. *c.* 4. that the Sheriffs ſhall not take the Indictments by Writs or Commiſſion directed
B unto them. And ſee the Statute of *Weſtm. cap.* 15. for thoſe who ſhall be bailed.

C And if a Man be indicted of Felony before the Bailiffs of the Hundred, and put into the Gaol for the ſame, if he offer ſufficient Sureties to the Bailiffs, and they will not bail him, then he who is impriſoned may have ſuch a Writ unto the Sheriff, thus:

The King to the Sheriff, &c. *It is ſhewed unto us on the Behalf of* I. *that whereas he is indicted by certain of his Enemies of Stealing a certain Ox of* R. *&c. committed at* R. *as it is ſaid, before the Bailiff* F. *of* B. *of his Hundred of* P. *by Inqueſt of the Office of the ſaid Bailiff taken, and upon that Occaſion is taken and*

(*a*) *Note*; The Manucaptors are only to pay a Fine to the King. 11 *H.* 6. 31.

detained in our Priſon of D. *and although he the ſaid* I. *hath ſeveral Times for himſelf offered ſufficient Mainpernors who will be Mainpriſe for him, according to the Form of the Statute ſome time ſince ſet forth at* Weſtminſter, *wherein it is contained*, &c. (as above.) *We command you, that if he the ſaid* I. *be of good Fame, and be indicted of the Theft aforeſaid by Inqueſt taken before the ſame Bailiff of his Office, as before is ſaid, and for the ſame Theft*, &c. (as above) *&c.*

And there is another Writ for a Man who is taken for Suſpicion of Felony, and kept in Priſon; and another Writ for him who is arreſted and kept in Priſon for Petty Larceny, *&c.* But this Clauſe ſhall then be put into the Writ, *viz. Si de aliis Latrociniis prius rectati non fuerint:* But this Clauſe, *dum tamen bonæ famæ ſint*, ſhall not be put in that Writ, where it is ſued for him who is taken for Petty Larceny.

D And if a Man who is of good Fame be appelled by an Approver, for which Cauſe he is arreſted and kept in Priſon; then he may ſue a Writ to the Sheriff, to let him be bailed upon good Sureties.

Ant. 66.

And ſo if a Man be appelled by an Approver, and be taken and kept in Priſon, and afterwards the Approver dieth; he may ſue a Writ to the Sheriff to ſet him at Liberty upon ſufficient Bail, if he be not a notorious Felon, although he be not a Man of good Fame.

E And if a Man be indicted as Acceſſary to a Murder, as by his Aſſent and Procurement, or Receipt, *&c.* or of aiding or counſelling, *&c.* and be taken for the ſame, he may ſue a Writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good Fame; but the Statute of *Weſtm. cap.* 15. doth not ſpeak ſo largely as the Writs in the Regiſter do, for the Statute doth not ſpeak of Commandment, Abetment or Conſent, *&c.*

F And if a Man be taken by the King's Commiſſion, and kept in Priſon for Felony or evil Doing, he may by his Friends put in Sureties in the Chancery, that he will appear before the Juſtices, *&c.* and be of good Behaviour, *&c.* and that Body for Body; and thereupon he ſhall have a Writ out of the Chancery upon the Sheriff, or unto the Conſtable of the Caſtle, where he is impriſoned, to ſet him at Liberty, if he be impriſoned for that Cauſe, and for no other.

Poſt. C.

G And if a Man be indicted before Juſtices of Peace of Treſpaſs, and impriſoned for the ſame by Proceſs, he may ſue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Juſtices at the Seſſions, and to ſet him at Liberty; but the Juſtices of Peace may take Bail of him, and ſet him at Liberty, if they ſo pleaſe.

H If a Man be indicted of Treſpaſs before the Juſtices of the Peace, and put in Priſon therefore, he may ſue a *Certiorari* to remove the Judgment into the King's Bench, directed to the Juſtices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the Party at his Coſts before the King in his Bench ſuch a Day, *&c.*

I And if a Man be indicted of Foreſtalling, and put in Priſon for the ſame, he may ſue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Juſtices, *&c.* to anſwer the Treſpaſs, and then to ſet him at Liberty.

K And if a Man ſueth a Writ of Error upon falſe Judgment given againſt Poſt. C. him in any City or Borough, where he is condemned, and kept in Priſon; he may ſue a Writ out of the Chancery, directed to the Mayor or Bailiffs of the City or Borough, to take Surety of him to anſwer what ſhall be due to the King and to the Party, if the Judgment be affirmed, commanding them for to ſet him at Liberty.

L And ſo if a Man ſueth an Appeal of Maihem againſt another, and afterwards [251.] he is arreſted at the Suit of the Defendant, or of another in any City or Borough, to the Intent that he may not ſue his Appeal; he may have a Writ out of the Chancery to the Bailiffs or Mayor, that he take Sureties of him to anſwer to the Party there, and that they ſet him at Liberty; and all thoſe Writs appear in the Regiſter.

A And if a Man be appelled of Robbery, he may ſue a Writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Juſtices, *&c.* and that he ſet him at Liberty; and if he have not arreſted him, that he do not arreſt him, if the Party offers to find ſuch Sureties to the Sheriff, *&c.*

B And if a Man be ſued in Debt or Treſpaſs, and be arreſted by *Capias* or Ant. 238. D. *Exigent*, and kept in Priſon, he may ſue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a Day, *&c.* and that he ſet him at Liberty, *&c.* But now by the Statute made *Anno* 23 *H.* 6. every Sheriff 23H.6.c.10. is bounden to let to Bail every one in his Cuſtody, who is arreſted by Writ, Bill or Warrant, in any Action Perſonal, or upon Indictment of Treſpaſs, if they offer reaſonable Sureties to appear at the Day, *&c.* in ſuch Places where the Writ, Bill, *&c.* is returnable, *&c.* but Perſons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or Perſons who are committed to Priſon by the Commandment of any Juſtice, and Perſons wandering who refuſe to ſerve, who remain in the Cuſtody of the Sheriff, all thoſe Perſons are excepted, for the Sheriff ought not to let ſuch Perſons to 33 H.6. Bail.

C If a Man be condemned in Treſpaſs before Juſtices of the Peace, and be Ant. I. arreſted and put into Priſon in the Cuſtody of the Sheriff, he may ſue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and ſet him at Liberty; and alſo he may have a Writ directed to the Juſtices of the Peace, commanding them to take Bail of him, and ſet him at Liberty: Or if the Party do find Sureties in the Chancery to appear and ſtand right in Law, then he ſhall have a Writ directed to the Juſtices of Peace, or unto the Sheriff, to ſet him at Liberty.

D If a Man be bounden in a Statute-Merchant payable at a Day certain, and at the Day he pay Part of the Money, and hath a Releaſe from the Conuſee, of the Reſidue, if the Conuſee ſue Execution, and arreſt the Party who hath the Releaſe, then the Recogniſor may ſue in Chancery, *&c.* by his Friends, and find Sureties, Body for Body, that he ſhall appear ſuch a Day in the King's Bench, and pay the (*a*) Money there, if he cannot otherwiſe be

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(*a*) And ſo in Account when the Defendant comes in by a *Capias ad Computandum*, he ſhall find Sureties to keep his Day, *i. e.* to appear *De Die in Diem*, and to pay the Sum, if found againſt him. 11 *H.* 6. 31. where they were at Iſſue before Auditors.

diſcharged; and thereupon he ſhall have a Writ to the Sheriff, reciting the whole Matter, and how he hath found Sureties in the Chancery, as is aforeſaid, commanding him for to ſet him at Liberty; and thereupon the Sheriff ought for to ſet him at Liberty; and if he will not ſo do, he ſhall have an *Alias*, and a *Pluries*, and an Attachment againſt the Sheriff, *&c.*

And if a Man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus*, or a *Certiorari* in Chancery; he ſhall not be bailed, but ſhall be remanded to Priſon, there to remain according to the Law, until he hath ſatisfied the Party Plaintiff, *&c.* *Anno* 2 *H.* 5. *cap.* 2. E

And two Juſtices of the Peace, whereof one is of the *Quorum*, may let Men ſuſpected of Felony, or other Perſons who are bailable, to Bail, until the next General Seſſions or Gaol-delivery: But the Juſtices of Peace are bound there to certify at the next General Seſſions, or Gaol-delivery, that Recognizance unto the Juſtices, *&c.* upon Pain of Forfeiture of ten Pounds, and that is by the Statute of 3 *H.* 7. *c.* 3. F

And he who is acquitted of Murder within the Year at the King's Suit, ſhall not be releaſed out of Priſon until he find Sureties to appear at any Time the Juſtices will require him until the End of the Year, *&c.* becauſe the Party may ſue his Appeal after againſt him within the Year, *&c.* G

And what Perſons are bailable, and what not, appeareth by the Statute of *Weſtm.* 1. *c.* 15. H

And the Juſtices of Gaol-delivery may puniſh thoſe who let Men to Bail, who are not bailable, by the Statute *de Finibus*, *cap.* 3.

And *Anno* 4 *Ed.* 3. *cap.* 2. The Marſhal of the King's Houſe cannot let thoſe to Bail who are indicted or appelled of Felony, who are committed to them, *&c.* but the Juſtices of the King's Bench may puniſh them, *&c.* And *Anno* 5 *Ed.* 3. *cap.* 8. they cannot let to Bail thoſe who render themſelves at the *Exigent* in Felony, and are committed to the Marſhal, nor by Baily nor Baſton; and if they do they ſhall be impriſoned for Half a Year, and fined at the King's Pleaſure. I

Writ of Diem clauſit extremum.

THE Writ of *Diem clauſit extremum* properly lieth where the King's Tenant who holdeth of him *in Capite*, as of his Crown, by Knight's Service, or in Socage, dieth ſeiſed, his Heir within Age, or of full Age; then that Writ ought to iſſue forth, and the ſame ought to be at the Suit of the Heir, *&c.* for upon that, when the Heir cometh of full Age, he ought for to ſue Livery of his Lands out of the King's Hands; and the Writ is ſuch: K

The King to his beloved W. *of* K. *his Eſcheator in the County of* Devon, *greeting: Becauſe* W. *of* S. *who held of us in Chief is Dead, as we have received Information; We command you, that without Delay, you take into our Hand all the Lands and Tenements of which he the ſaid* W. *was ſeiſed in his Demeſne as of Fee, in your Bailiwick, on the Day when he died, and cauſe them to be ſafely kept until we ſhall command you ſome other Matter thereupon; and by the Oath of honeſt* [252.]

and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, inquire diligently, how much Lands and Tenements the ſaid W. *held of us in Chief, as well in Demeſne as in Services in your Bailiwick on the Day when he died, and how much of others and by what Services, and how much thoſe Lands and Tenements are worth by the Year in all Iſſues, and on what Day the ſaid* W. *died, and who is his next Heir, and of what Age; and the Inquiſition thereof diſtinctly and openly made, ſend to us without Delay in our Chancery, under your Seal, and the Seals of thoſe by whom it ſhall be made, and this Writ. Witneſs*, &c.

4 Eliz. Dyer 213. They ſhall be only of the Lands in Socage in Capite, and not of the Lands holden of other Lords.

A And if the King had a Ward, and afterwards one who holdeth of the ſaid Ward his Lands by Knight's Service dieth, his Heir within Age, or of full Age; then a *Diem clauſit extremum* after his Death ſhall iſſue in this Form:

Staundf. 13. Plo. Com. 204.

The King to his beloved, &c. *Becauſe* I. *of* S. *who of the Inheritance of* W. *of* O. *deceaſed (who held of us in Chief, being within Age and in our Wardſhip) held by Knight Service, is dead, as we have received Information; We command you, that*, &c. *all the Lands and Tenements*, &c. *and by the Oath*, &c. *how much Lands and Tenements the ſaid* I. *held of the Inheritance aforeſaid, and who is his next Heir*, &c. (as above.)

B And if the Heir dieth being in the Cuſtody of the King, then ſhall iſſue another Writ of *Diem clauſit extremum* in this Form:

The King, &c. *Becauſe* R. *of* H. *Son and Heir of* I. *of* H. *deceaſed, who held of us in Chief, lately, while he was within Age and in our Wardſhip, died, as we have received Information*, &c. *We command you, that by the Oath*, &c. *you inquire what Lands and what Tenements by the Death of the ſaid* I. *and by reaſon of the Minority of the Heir of the ſaid* I. *are come to our Hands, and ſo are in our Hand, and how much thereof are held of us in Chief, and how much of others, and by what Service, and how much*, &c.

C And if the King's Tenant dieth who holdeth by Knight's Service, and his Wife be endowed, and the King hath the Wardſhip of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's Hands; then a *Diem clauſit extremum* ſhall be ſued in this Manner:

The King to his beloved N. *of* B. *Mayor of his City of* London, *and to his Eſcheator in the ſame City, greeting: Becauſe* E. *who was the Wife of* I. *of* B. *(lately deceaſed) who held certain Lands and certain Tenements of us in Dower, of the Inheritance of the ſaid* I. *ſome time her Huſband, is dead, as we have received Information; We command you, that*, &c. *all the Lands and Tenements which the ſame* E. *ſo held in Dower of the Inheritance of the ſaid* I. *in your Bailiwick*, &c. *by the Oath*, &c. *you diligently inquire, what Lands and Tenements the ſame* E. *ſo held in Dower of the ſaid Inheritance in your Bailiwick on the Day when ſhe died, and how much thereof are holden of us in Chief, and how much of others, and by what Services*, &c.

D Otherwiſe after the Death of Tenant for Life of Lands, of which the King hath the Reverſion in Ward:

Becauſe A. *who certain Lands and certain Tenements of the Inheritance of* E. *Couſin and Heir of* H. *deceaſed, who held of the King in Chief, being within Age and in the Wardſhip of the King, held for his Life, is dead*, &c. *We command you*, &c. or thus, *Becauſe* A. *who held certain Lands and certain Tenements of*

E *us by the Law of* England, *of the Inheritance of* M. *his Wife lately Deceaſed, is dead*; *We command you*, &c.

F And if Tenant for Life, the Remainder to the King and his Heirs, dieth, the King ſhall have a *Diem clauſit extremum* in this Manner:

Becauſe A. *who was the Wife*, &c. *held certain Lands and certain Tenements for her Life, and which, after the Death of her the ſaid* A. *ought to remain to us and our Heirs, is dead*; *We command you*, &c. *what ſhe ſo held*, &c. *and which after her Death*, &c. *ought to remain*, &c. or thus, *After the Death of the ſaid* B. *ought to come to our Hands by reaſon of the Minority of the ſaid Heir*, &c.

And there are divers other Forms of Writs in the Regiſter after the Death of Tenant for Life, or Tenant in Dower.

G And if the King hath the Temporalties of the Biſhop in his Hands, and afterwards one who holdeth by Knight's Service of thoſe Temporalties dieth, his Heir in Ward to the King, then the *Diem clauſit extremum* ſhall be in ſuch Form:

The King, &c. *Becauſe* B. *who held of the Archbiſhoprick of* Canterbury *(being void and in our Hand) by Knight's Service, is dead*, &c. *We command you*, &c. *of which the ſaid* A. *was ſeiſed in his Demeſne as of Fee, and held of the ſaid Archbiſhoprick, without Delay*, &c.

H And if the King hath an Ideot in his Cuſtody, and afterwards the Ideot dieth, the Writ of *Diem clauſit, &c.* ſhall be thus:

The King, &c. *Becauſe* B. *of* C. *lately a Fool and an Ideot, whoſe Lands and Tenements by reaſon of the ſaid Ideocy are in our Hand, is dead, as we have received Information*; *We command you, that by the Oath of*, &c. *you diligently inquire what Lands and what Tenements by reaſon of the Ideocy of the ſaid* B. *were taken into our Hand, and are yet in our Hand, and of whom or of what Perſons* [253.] *they are holden, and by what Service, and how much thoſe Lands are worth*, &c. *and who is next Heir*, &c. *and the Inquiſition*, &c.

A And if a Writ of *Diem clauſit extremum* be ſent to the Eſcheator, and the Eſcheator be removed from his Office, or dieth before he make the Inquiry, *&c.* then ſhall iſſue forth another Writ of *Diem clauſit extremum*, which ſhall be ſuch:

The King, &c. *Whereas we being lately given to underſtand that* I. *of* B. *who held of us in Chief, is dead*, &c. *we commanded our beloved* W. *of* O. *lately our Eſcheator in the County aforeſaid, that*, &c. *all the Lands and Tenements*, &c. (as before, changing what ought to be changed) *and the ſaid* W. *is now removed from the ſaid Office, by which the Execution of our ſaid Writ cannot be done, we willing to be certified upon the Premiſſes, command you, that by the Oath*, &c. *you diligently make Inquiſition upon the Premiſſes, and the ſame diſtinctly*, &c. *Witneſs*, &c.

And another Form of Writ in this Manner:

The King to his beloved, &c. *Whereas we being lately given to underſtand that* I. *of* B. *who held of us in Chief is dead, commanded our beloved and faithful* H. *of* B. *lately our Eſcheator in the ſame County, that all the Lands*, &c. *he ſhould take into our Hand without Delay*, &c. *until we ſhould thereupon command ſome other Matter, and by the Oath*, &c. *ſhould inquire what Land*, (as in the firſt Writ) *and the ſaid* H. *before the ſaid Writ was executed, was removed from the ſaid Office: We willing to be certified more fully upon the Premiſſes, command* *you, that you make diligent Inquiſition upon the ſaid Articles and every of them, and the ſame diſtinctly and openly made*, &c. (as above.)

But if the firſt Eſcheator do make Inquiry by Force of the Writ, and afterwards dieth before the Inquiſition be returned into the Chancery, *&c.* then a *Certiorari* ſhall be awarded againſt his Executors, to certify the ſame Inquiſition; becauſe it is a good Matter of Record (*a*) when it is found, and the Jurors have put their Seal unto the ſame.

B If the King's Tenant, who holdeth of him by Knight's Service, dieth, his Heir within Age, and no Writ is awarded within one Year after his Death, then, after the Year is paſt, a Writ called a *Mandamus* ſhall iſſue forth; and that Writ doth not vary in Words from the Writ of *Diem clauſit extremum*; and the Writ is ſuch:

The King to his beloved W. *of* E. *his Eſcheator in the County of* B. *greeting: We command you, that by the Oath of honeſt and lawful Men of your Bailiwick, by whom*, &c. *you diligently inquire what Lands and what Tenements* I. *of* B. *held of us in Chief, as well in Demeſne, as in Service, in your Bailiwick on the Day when he died, and how much of others, and by what Service, and how much thoſe Lands and Tenements are worth by the Year in all Iſſues, and what Time the ſaid* I. *died, and who is his next Heir, and of what Age, and who, or what Perſons occupied thoſe Lands and Tenements, from the Time of the Death of the ſaid* I. *and perceived the Rents and Profits thereof; and by what Title, and how and in what Manner*, &c. *and the Inquiſition*, &c.

C And note, That if a Man ſue a Writ of *Diem clauſit extremum*, it ought to be ſued within the Year, and after the Year (*b*) he ſhall have that Writ of *Mandamus*, and not a *Diem clauſit extremum*. And if a Man ſue forth a Writ of *Diem clauſit extremum*, and he loſeth the Writ, or the ſame is taken from him with Force againſt his Will, he ſhall not have a new *Diem clauſit*, *&c.* But if he hath a *Diem clauſit*, *&c.* and the Heir be found within Age, and that the King hath Title to him, becauſe that his Anceſtor held of the King at the Time of his Death by Knight's Service, and afterwards the Heir dieth being in Ward to the King, and no Writ of *Diem clauſit extremum* within the Year after his Death; yet there a *Mandamus* ſhall not be awarded after the Year of the Death of the Ward, but a new Writ of *Diem clauſit extremum*, becauſe the Heir died in Ward to the King; and that is by the Rule of the Regiſter.

Stamf. 52.
Vide 1 Eliz.
Dyer 170.
5 Ed. 4. 13.

D Or if the King's Tenant who holdeth of the King by Knight's Service in chief dieth, the Heir may have a ſpecial Commiſſion directed to certain Perſons, to inquire what Lands, *&c.* his Father held the Day of his Death, *&c.* and that ſpecial Commiſſion ſhall be as good for the Heir as a Writ of *Diem clauſit extremum* after the Death of his Anceſtor. And upon ſuch Commiſſion and Inquiſition taken thereupon, and found and returned in the Chancery, the Heir at full Age ſhall have his Livery as well as upon a Writ of *Diem clauſit extremum* ſued forth, *&c.* But upon a general Commiſſion to inquire of

Stamf. 52.

(*a*) But before the Indenting and the Ingroſſing, and Setting of their Seals (although the Inquiſition be taken and written on Paper) it is no Verdict; and therefore a *Superſedeas* then held well, *&c* *Dyer* 170. See the Stat. 44 *Ed.* 3. *c.* 13.

(*b*) *Contra* if the Writ abates for falſe *Latin*, *&c.* 2 *H.* 6. 5.

all Wards, *&c.* the Law is otherwiſe; for the Heir upon ſuch a Commiſſion and Inquiſition returned ſhall not have Livery.

When the Heir, who is in Ward to the King by Reaſon of Lands holden *in Capite*, cometh to his full Age, then he ſhall have a Writ directed to the Eſcheator, to prove his Age, before he ſhall have Livery of his Lands; and the Writ is ſuch:

The King to his beloved I. *of* B. *his Eſcheator in the County of* B. *greeting:* E
Becauſe A. *of* B. *who married* M. *the Siſter and one of the Heirs of* R. *deceaſed,*
who held in Chief of Lord Edward *lately King of* England *our Grandfather, ſays,*
that the ſaid M. *is of full Age, and prays of us the Lands and Tenements which*
are of the Inheritance of her the ſaid M. *(and one Part whereof are in our Hand,*
and another Part in the Cuſtody of I. *of* H. *under the Commiſſion of our ſaid*
Grandfather, until the lawful Age of the ſaid Heir) to be rendered to him; where-
[254.] *fore we willing that the ſaid* M. *who was born at* G. *in the County of* N. *and was*
baptized in the Church of the ſame Town, as it is ſaid, ſhall prove her Age before
you, command you, that at a certain Day and Place which you ſhall appoint for this
Purpoſe, you take that Proof by the Oath as well of Knights as of honeſt and
lawful Men of your Bailiwick, by whom that Proof may be taken, and the Truth
of the Age of her the ſaid M. *better known and inquired of, and give Notice to*
the ſaid I. *that he may be then there to ſhew, if he has, or knows any thing, to*
ſay for himſelf, why to the ſaid A. *and the ſaid* M. *as to her who is of full Age*
(if ſhe be of full Age) we ought not to render the Lands and Tenements aforeſaid,
and without Delay ſend that Proof ſo taken, to us under your Seal, and the Seals
of thoſe by whom it ſhall be taken, and this Writ. Witneſs, &c.

And by that Writ it appeareth, that the Writ *de Ætate probanda* ſhall be directed unto the Eſcheator of the County where the Heir was born, and not where the Lands of the Heir lie; but yet it ſeemeth reaſonable that he may ſue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in *Ireland*, or beyond the Sea, as in *Calais*, *&c.*

There is another Form of Writ thus:

The King, &c. *Becauſe* M. *of* P. *Son and Heir of* F. *deceaſed, who held of us in Chief, ſays that he is of full Age, and prays of us the Lands and Tenements which are of his Inheritance, and in our Cuſtody, until the lawful Age of the ſaid Heir, to be rendered to him; wherefore we will,* &c. (as before, until) *may be better known and inquired into,* &c. *and,* &c. *ſend that Proof,* &c. (as before).

There is another Form when the King committeth the Ward during his Nonage, then when he will ſue an *Ætate probanda*, he ought to make mention of the ſame Commitment.

And if a Man be in Ward unto the King by Reaſon of the Temporalties of A
a Biſhoprick in the King's Hands, when the Heir cometh of full Age he
ought for to ſue forth an *Ætate probanda*; and the Writ ſhall mention the
whole Matter; and yet he doth not hold of the King *in Capite.*

And when the Heir hath proved the Age, and the Writ is returned, then he ought to do his Homage to the King, or agree with the King for the Reſpiting of the Homage, and he ſhall have ſuch Writ:

The

B *The King to the ſame Eſcheator: Know you, that we have taken Homage of* I. *of* H. *Son and Heir of* B. *of* H. *deceaſed, of all the Lands and Tenements which the ſaid* B. *his Father held of us in Chief on the Day when he died, and have rendered to him thoſe Lands and Tenements; and therefore we command you, that having received Security of the ſaid* I. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* I. *to have full Seiſin of all the Lands and Tenements aforeſaid, and whereof the ſaid* B. *his Father was ſeiſed in his Demeſne as of Fee in your Bailiwick on the Day when he died, and which by reaſon of the Death of the ſame* B. *are taken into our Hand; ſaving the Right of every one, and ſaving to* Maude *who was the Wife of* B. *her reaſonable Dower, falling to her of the ſaid Lands and Tenements, according to the Law and Cuſtom of our Realm of* England, *and by us to be aſſigned. Witneſs*, &c.

C And the Writ aforeſaid lieth, where the Heir was of full Age at the Time of the Death of his Anceſtor, and ſueth his Livery; but if the Heir were in Ward, and hath proved his Age, then he ſhall have a Writ thus:

The King, &c. *Becauſe* N. *of* E. *Son and Heir of* B. *of* C. *deceaſed, who held in Chief of Lord* Edward *lately King of* England *our Grandfather, hath ſufficiently proved his Age before you, as it is found by the Proof taken by our Command and returned into our Chancery; we have taken Homage of the ſaid* N. *of all the Lands and Tenements which the ſaid* B. *his Father held of our ſaid Grandfather in Chief on the Day when he died, and have rendred him thoſe Lands and Tenements; and therefore we command you, that you cauſe him the ſaid* N. *to have full Seiſin of all the ſaid Lands and Tenements, and of which the ſaid* B. *his Father was ſeiſed in his Demeſne as of Fee in your Bailiwick on the Day when he died, and which, after the Death of the ſaid* B. *were taken into the Hand of our ſaid Grandfather, and ſo taken are in our Hand, ſaving the Right of every one*, &c. *Witneſs*, &c.

D (*a*) And if the Huſband ſeiſed in Fee in Right of his Wife be outlawed of Felony, for which the Lands came into the King's Hands, and afterwards the Huſband who is outlawed dieth; a Writ of *Diem clauſit extremum* ſhall be awarded, which ſhall be ſuch:

Becauſe A. *is dead, whoſe Lands and Tenements which he held, of the Right and Inheritance of* N. *lately his Wife, yet living, came to the Hands of Lord* Edward *lately King of* England, *the Fourth after the Conqueſt, by reaſon of a certain Outlawry proclaimed againſt him for a certain Felony, whereof he was indicted, as it is ſaid, and were in the Hand of Lord* Henry *our Father, and ſo are in our Hand*, &c. *We command you, that by the Oath*, &c. *you inquire what Lands and what Tenements by reaſon of the ſaid Felony came to the Hand of the ſaid late King, and yet are in our Hand, and of whom or of what Perſons*

(*a*) So one has no Entry, although the Eſtate of the King was determined, becauſe the Poſſeſſion of the King continues. *Bro. Travers* 48. 4 *Aſſ.* 4. 19 *H.* 6. 20. 22 *Ed.* 4. 3. and *Paget*'s Caſe, 34 *Eliz.*

The Leſſee for Life is attainted, the King ſeizes, the Leſſee dies, he in Reverſion was put to his *Monſtr' de Droit*, adjudged *in Scaccario:* And ſee accordant *Lib. Parl.* 287. *Petitio T. Redman.* See 8 *Co.* 170. *Hale*'s Caſe. Tenant in Tail attainted of Treaſon, and all his Right given to the King, ſaving the Right of Entry of Strangers; the King's Eſtate determines after the Death of Tenant in Tail without Iſſue, without any Entry of the Donor, *&c. Dyer* 101. See 23 *H.* 6. *Entry congeable* 53.

they are holden, and by what Service, and how and in what Manner, and how much thoſe Ladds and Tenements are worth by the Year in all Iſſues, according to the true Value thereof, and who or what Perſons, hath or have occupied thoſe Lands and Tenements from the Time of the Perpetration of the ſaid Felony, and hath or have received the Iſſues and Profits thereof, by what Title, and how and in what Manner? And the Inquiſition, &c.

[255.]

Quæ plura.

Stamf. Prærog. 52. THE Form of the Writ of *Quæ plura* is ſuch: A

The King to his Eſcheator, &c. *greeting: Becauſe we are given to underſtand that* A. *Deceaſed, who held of us in Chief, upon the Day when he died held more Lands and Tenements in the County aforeſaid, than are ſpecified in the Inquiſition thereof taken by our Command after the Death of the ſaid* A. *and returned into our Chancery; We command you, that by the Oath of honeſt*, &c. *you inquire what more Lands and Tenements the ſaid* A. *held in the ſaid County on the Day when he died, and of whom, or of what Perſons thoſe more Lands and Tenements are holden, and by what Service, and how much they are worth by the Year in all Iſſues, and the Inquiſition*, &c.

Stamf. Prærog. 52. 4 Ed. 4. 22, 23. Bro. Office 38. The Writ of *Melius inquirendo* lieth, where the firſt Office is found by Virtue of a Writ of *Diem clauſit extremum*, the which Office wanteth Certainty in divers Points, as in the Tenure of divers Lands, or in the Value of any of them, *&c.* then ſhall iſſue forth ſuch Writ of *Melius inquirendo:* But if the firſt Office be found by the Eſcheator *virtute officii ſui*, and not by Virtue of any Writ or Commiſſion, and the Office wanteth Certainty in divers Things, as before; then a *Melius inquirendo* ſhall not iſſue forth, but the Office and Inquiſition returned ſhall be as void, becauſe it is not found by Virtue of any Commiſſion or Writ, but only *ex officio* of the Eſcheator, without any Command to him to do the ſame; and therefore the ſame ſhall be taken as void, if it want Certainty in any Point. B

Melius inquirendo.

THE Form of the Writ of *Melius inquirendo* is ſuch: C

The King to the Eſcheator, &c. *greeting: Whereas by a certain Inquiſition taken before our Eſcheator in the County aforeſaid, by our Command, and returned into our Chancery, it is found, that* N. *deceaſed, held divers Lands and Tenements with the Appurtenances in the ſaid County; and who is the next Heir of the ſame* N. *on the Part of his Father the Jurors of that Inqueſt do not know; nevertheleſs on the Part of* R. *Mother of the ſaid* N. W. *the Son of* B. *is his next Heir, and of the Age of twenty-one Years or more; and becauſe in the ſaid Inquiſition* (*a*) *it is not ſpecified, who is the next Heir of the ſaid* N. *We command you, that by the Oath*, &c. *you inquire who is the next Heir of the ſaid* N. *how and in what Manner, and the Inquiſition*, &c.

D There is another Form of Writ of *Melius inquirendo*, becauſe he doth not ſpecify in the Inquiſition what Eſtate the Tenant had in the Lands; or becauſe he doth not ſhew in the Office (*b*) of whom, or of who the Lands were holden; or becauſe he doth not mention in the Writ the true Value, and the King is informed that the Lands are of greater Value than is certified by the Office. And note, That a *Melius inquirendo* ſhall be awarded upon a Surmiſe made in Court, that the Lands are of a greater yearly Value than is declared by the Office; and upon like Reaſon upon a Surmiſe made, that they are holden by other Services, or that the Tenant was ſeiſed of other Lands or other Eſtate than is mentioned in the Office, (*c*) a *Melius inquirendo* ſhall be awarded.

3 H. 6. 5, 8.
Dyer 269.
Kelw. 200.
14 H. 7. 23.

Writ of Livery.

E THERE is another Form of Writ of Livery, where the King's Tenant *in Capite* dieth, his Heir within Age, and the King ſeiſeth the Ward, and afterwards that Heir dieth within Age, and in Ward to the King, for which the Lands come unto his Heir who is within Age, and in Ward to the King; now when that Heir cometh of full Age, he ſhall have a Writ of Livery in this Form:

The King to his beloved, &c. *his Eſcheator in the County of* I. *greeting: Becauſe* I. *Brother and Heir of* S. *Son and Heir of* I. S. *deceaſed, who held of us as of the Honour of* H. *being in our Hand, by the Service of rendring to the Guard of the Caſtle of* Dover *ten Shillings by the Year, hath ſufficiently proved his Age before* Roger *of* W. *lately our Eſcheator in the County aforeſaid, as it is found by that Proof taken by our Command, and returned into our Chancery; We have taken Homage and Fealty of him the ſaid* I. *the Brother of* S. *of all the Lands and Tenements which the ſaid* I. S. *the Father held of us as of the Honour aforeſaid on the Day when he died, and which after the Death of the ſaid* I. S. *the Father, and by reaſon of the Minority of him the ſaid* S. (*which ſaid* S. *while he was within Age and in our Cuſtody died*) *duly came to our Hands, and we have rendred to him the ſaid* I. *the Brother of* S. *all thoſe Lands and Tenements with the Appurtenances; And therefore we command you, that you cauſe him the ſaid* I. *the Brother of* S. *to have full Seiſin of all the ſaid Lands and Tenements with the Appurtenances, and of which the ſaid* I. S. *the Father was ſeiſed in his Demeſne as of Fee in your Bailiwick on the Day when he died, and which by the*

(*a*) So if it be found by the *Diem clauſit extremum*, that *J. S.* died ſeiſed, and that the Lands deſcended to *T.* as Son and Heir, and does not ſhew of what Eſtate he died ſeiſed. 3 *H.* 6. 5.

(*b*) In ſuch Caſe before the Statute 2 *Ed.* 6. *c.* 8. it ſhould be taken to be held of the King in Chief. *Dyer* 144. See 2 *H.* 7. 18.

(*c*) See *Cap.* 168. The King ſhall not have a new *Melius inquirendo* after a former (returned, *&c.*) And *Note*, this Writ ſhall not iſſue where the firſt Writ was ſufficient, tho' not (executed). 7 *Eliz.* *Q.* 25.

Death of the ſaid I. S. *the Father, and by reaſon of the Minority of him the ſaid* S. *came to our Hands, and ſo are yet in our Hands by reaſon of the Minority of the ſaid* I. *the Brother of* S. *ſaving the Right of every one.*

F And when an Heir ſhall have Livery at his full Age, and holdeth one Manor *in Capite* of the King by Knight's Service, and holdeth other Lands in ſeveral Counties of others, then a Writ ſhall iſſue to the Eſcheator of the [256.] County where he holdeth *in Capite*; and the Form ſhall be ſuch: *Know you that we have taken Homage*, &c. And the Writs to other Eſcheators being thus: *Whereas we have taken Homage*, &c.

21 Ed. 3. 41. ac. Of the Honour of Berkhampſtead. So 29 H. 8. 24.

A And it appeareth by the Writ before, that to hold Land (*a*) to render a certain Rent for the guarding of the Caſtle of *Dover* ſhall be a Tenure *in Capite*, and by Knight's Service; and it may be that in ancient Time he ſhould guard the Caſtle, and that now the King hath taken the Rent for the ſame, and yet the Taking of the Rent doth not alter the Nature of the Tenure. *Quære.*

B If two Men by Licence purchaſe Lands holden of the King *in Capite*, and afterwards one of them dieth, the other ſhall have the Lands (*b*) *cum exitibus* out of the King's Hands, upon the Matter found by Inqueſt; but by the Regiſter he ought to ſhew the Licence in the Chancery. 39 *Ed.* 3. 21.

4 Eliz. Dyer 213. rule ac. Plow. Com. 109, 204. 20 Eliz. Dyer 362.

C And if the King's Tenant who holdeth in Socage dieth, his Heir of the Age of fourteen Years and more, and the King ſeizeth the Lands, he ought for to ſue Livery of them. But it ſeemeth the King ought not for ſeize the other Lands which he holdeth of other Lords by other Services, *&c.* and if he do, the other Lords ſhall have a Writ of *Amoveas manum*, which is called an *Ouſter le main*, *una cum exitibus*, *&c.* ſo as they ſhall have (*c*) the Iſſues and Profits thereof which were taken by the King; and the Form of the Writ is ſuch:

The King to his beloved A. *his Eſcheator*, &c. *Becauſe we have received Information by the Inquiſition which we cauſed to be made by you, that* I. *of* T. *deceaſed, held in his Demeſne as of Fee, on the Day when he died, one Meſſuage, and one Oxgang of Land with the Appurtenances in* K. *of us in Chief, as of the Honour of the Abbey of* M. *being in our Hand, by Fealty and by the Service of three Shillings and nine Pence to be rendred to us yearly, and that he did not hold any other Lands and Tenements of us in Chief as of the Crown, in your Bailiwick, on the Day when he died; by which the Cuſtody of the Lands and Tenements which were the ſaid* I.*'s on the ſaid Day, to us, at preſent ought to belong, and that on the ſaid Day he held divers other Lands and Tenements, of divers Lords, by divers Services; and that* N. *the Son of the ſaid* I. *is his next Heir,*

(*a*) See a Tenure of the Honour of *Bologn*, no Tenure in Chief, and therefore the Land was delivered to the Lords. *Rot.. Clauſ.* 2 *Ed.* 1. *M.* 6. and ſo of the Honour of *Peverell*. *Rot. Clauſ.* 4 *Ed.* 1. *M.* 16. and *Rot. Clauſ.* 3 *Ed.* 1. *M.* 11. See *Stamf. Prærog.* 12. 29. *b.* *Ant.* 175. *Bro. Livery* 58. 44 *Aſſ.* 35. 18 *Ed.* 3. 22.

(*b*) Yet ſee 18 *Ed.* 3. 21. If the King's Tenant aliens with Licence to *A.* for Life, Remainder to *B.* in Fee, and *A.* dies: Now the King has Cauſe to ſeize till *B.* has done his Services, and therefore he ſhall not have an *Ouſter le main, cum exitibus*, except *de gratia*.

(*c*) *Sed nota*; *Nomine exituum* are not ſuch Profits for which the Eſcheator has accounted and paid into the Exchequer; nor Wards happening and ſeiſed, *per Wilby*; nor Amerciaments levied; nor an Avoidance of a Church. 18 *Ed.* 3. 22. 24 *Ed.* 3. 29. 39 *Ed.* 3. 21. and yet ſuch Iſſues for which the Eſcheator has only accounted, but not paid, are reſtored. 24 *Ed.* 3. 60.

See *Stamf. Prærog.* 13. *b.* *Mag. Char.* *Gard* 3. 38 *H.* 6. 8. *Livery* 60. 12 *H.* 8. *Gard* 77.

and of the Age of ſixteen Years and upwards; *We have received the Fealty of him the ſaid* N. *for the Meſſuage and Lands aforeſaid, and have rendred the ſame unto him*; *Therefore we command you, that having received Security of the ſaid* N. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* N. *to have full Seiſin of the Meſſuage and Lands aforeſaid, which by reaſon of the Death of him the ſaid* I. *you took into our Hand, ſaving the Right of every one*; *but of other Lands and Tenements which the ſaid* I. *held of other Lords in your Bailiwick on the Day when he died, which likewiſe on that Occaſion you took into our Hand, intermeddle yourſelf no further, ſaving our Right and every other Perſon's Right whatſoever*; *and the Iſſues (if you have received any of the Lands and Tenements which are ſo holden of other Lords) deliver to thoſe to whom they belong*, &c.

And by this Writ it appeareth, that the Heir in Socage being of full Age at the Time of the Death of his Anceſtor, ſhall have Livery *cum exitibus*; but if he were within the Age of fourteen Years at the Time of his Anceſtor's Death, his *Prochein Amies* muſt ſue an *Ouſter le main cum exitibus*: But the other Lords ſhall have an *Ouſter le main* for the Lands holden of them by Knight's Service *cum exitibus.*

Ant. L.
35 H. 6. 52.
45 Ed. 3.
Stamf. Prærog. 13.
45 Ed. 3. 19.
35 H. 6. 52.

D And if the King hath the Cuſtody of an Idiot, and of his Lands which are holden of the King *in Capite*, and the Idiot dieth, and his Heir be of full Age; the Heir ſhall have a Writ of Livery in this Form:

Stamf. Prærog. 13.

The King, &c. *to his Eſcheator*, &c. *Becauſe we have received Information by the Inquiſition which we cauſed to be made by you, that divers Lands and Tenements with the Appurtenances in* O. *were taken into the Hand of Lord* Edward *ſome time King of* England, *our Grandfather, by reaſon of the Fooliſhneſs and Idiocy of* W. *of* P. *now deceaſed, and ſo are in our Hand, and that the ſame Lands and Tenements are holden of us in Chief, as of the Honour of the Abbey of* M. *being in our Hand, by the Service of the eighth Part of one Knight's Fee, and doing Suit at our Wapentake of* Holderneſs *from three Weeks to three Weeks, and rendring to the Guard of our Caſtle of* Skipton *at* Midlent *ſeventeen Pence*; *and that* Geoffrey *the Son of* William de Redmain, *Couſin of the ſaid* W. *is the next Heir of him the ſaid* W. *and of full Age*; *We have received the Fealty of him the ſaid* Geoffrey *for all the Lands and Tenements aforeſaid, and have rendred them to him, and we of our eſpecial Favour have reſpited the Homage of him the ſaid* Geoffrey *until the Feaſt of* Eaſter *next coming*; *And therefore we command you, that having received Security of the ſaid* G. *for his reaſonable Relief to be rendred to us at our Exchequer, you cauſe him the ſaid* G. *to have full Seiſin of all the ſaid Lands and Tenements being in our Hands, ſaving the Right of every Perſon whatſoever. Witneſs*, &c.

E And when the Heir in Ward unto the King is of full Age, he ſhall have a Writ out of the Chancery unto the Keeper of the Privy Seal, teſtifying that he is of full Age; and thereupon he ſhall have a Privy Seal unto the King's Chamberlain to receive his Homage: And when he hath taken his Homage, he ſhall have a Writ from the Chamberlain to the Chancellor, teſtifying that he hath taken his Homage; and thereupon he ſhall have a Writ of Livery. And all this Matter appeareth at large in the Abridgments in the Title *Livery*, which ſee there.

Stamf.Prærog. 80, 84. Br. Livery 69. 35 H. 6. Livery 15. And if three Coparceners be in Ward to the King, the Coparcener who firſt cometh of Age ſhall ſue Livery, and ſhall have Partition made thereupon.

And if an Heir Female be in Ward to the King, and holdeth of other G Lords in Socage; now when ſhe cometh of the Age of fourteen Years ſhe ſhall not ſue Livery of the Lands holden in Socage, but ſhe ſhall tarry until her Age of ſixteen Years, if ſhe be not married before that Age, for ſhe ſhall ſue Livery but once for all her Lands, *&c.*

[257.] Stamf.Prærog. 80. And if the Heir of full Age ſue his Livery, and omitteth any Parcel of his A Inheritance, as an Advowſon, or a Reverſion, or one Acre of Land which is not found by the Writ of *Diem clauſit extremum*, and thereupon ſueth his Livery; if it be found afterwards by another Office, that his Anceſtor died ſeiſed of that Advowſon, Reverſion or Acre of Land, which was not found by the firſt Office upon which he ſued his Livery before, then the King may reſeize all the Lands, *&c.* and the Heir ſhall anſwer the King for all the Rents, Iſſues and Profits received in the mean time by the Heir, *&c.*

If the King's Tenant holdeth by Knight's Service and *in Capite*, and alſo B holdeth other Lands of the Archbiſhop of *Canterbury* by Knight's Service, and dieth ſeiſed, his Heir within Age; the King ſhall have the Lands holden of him in Ward, and the Archbiſhop ſhall have the other Lands holden of him in Ward: And that is by the Statute of *Prærogativa Regis*, *c.* 1. And if the King ſeizeth all the Lands, the Archbiſhop ſhall have an *Ouſter le main cum exitibus.* Stamf.Prærog. 12. b.

And if the King's Tenant who holdeth *in Capite* and by Knight's Service, C dieth ſeiſed, and a Stranger doth abate, for which the Heir at full Age recovereth by Aſſiſe of Mortdaunceſtor; yet he ought for to ſue his Livery, and to do his Homage, and the Abator ſhall anſwer the King the mean Profits and Iſſues received. And the Writ *de Ætate probanda* may be directed to certain Commiſſioners to inquire of the Age of the Infant, as well as unto the Eſcheator; and the Form of the Commiſſion is ſuch: Stamf.Prærog. 8.

Commiſſion pro Ætate probanda.

THE *King to his beloved*, &c. *Know ye, that we have aſſigned you to inquire* D *by the Oath as well of Knights as of other honeſt and lawful Men of the Venue of* N. *in the County of* Lincoln, *whether* I. *the Son and Heir of* B. *born at* N. *and baptized in the Church of the ſame Town, and who by reaſon of his Minority is in our Cuſtody, be of full Age, as he ſaith, or not; And therefore we command you, that at a certain Day and Place, which you ſhall appoint for this Purpoſe, you make that Inquiſition, and ſend the ſame diſtinctly and openly made to us in our Chancery without Delay, and this Writ; for we have commanded our Sheriff of* Lincoln, *that at the Day and Place whereof you ſhall give him Notice, he cauſe to come*, &c. *In Witneſs whereof*, &c. And thereupon a Writ ſhall be ſent to the Sheriff to return an Impanel before the Commiſſioners at a certain Day by them appointed; and the Writ ſhall be ſuch:

The King to the Sheriff, &c. *We command you, that you ſummon by good Summoners twelve as well Knights as other honeſt and lawful Men of the Venue of* N. *that they be before our beloved and faithful* A. B. *and* C. *and thoſe whom we have aſſociated unto them, at a certain Day and Place, whereof they the ſaid* A. B. *and* C. *ſhall make known to you, ready by Oath to recognize, whether* F. *the Son and Heir of* D. *born at* N. *and baptized in the Church of the ſaid Town, who by reaſon of his Minority is in our Cuſtody, be of full Age (as he ſaith) or not; and in the mean time let them go to the ſaid Church and Town, and diligently inquire the Truth of the Age of the ſaid* F. *and cauſe their Names to be put in the Writ; and give Notice to* E. *and* S. *Guardians of the Land* (*a*) *of the ſaid Heir, that they be then there to hear that Recognizance, to ſhew, if any thing ought to hinder, why the ſaid* I. *ought not to have his Lands and Tenements: And have there the Names of thoſe twelve, and this Writ. Witneſs*, &c.

E And thereby it appeareth, that if the King hath committed the Wardſhip of the Land unto another, that the Committee ſhall be warned to be there; but if the King hath the Lands in his own Hands, then that Clauſe, *And give Notice to* E. *and* S. *the Guardians*, &c. ſhall be omitted out of the Writ.

F And by the Rule of the Regiſter, a Woman ſhall do Homage and Fealty; and ſhall pay a Relief when ſhe ſueth her Livery, if ſhe be of full Age at the Time of the Death of her Anceſtors; and if ſhe hath a Huſband, if they have Iſſue when they ſue Livery, then the Huſband ſhall do the Homage and Fealty; but if they have no Iſſue, then the Huſband ſhall do only Fealty (*b*).

G And if two Jointenants be, who hold of the King by Licence of Purchaſe, and one of them dieth, the other ſhall have an *Ouſter le main cum exitibus:* But if the Purchaſe be made without Licence, then not, becauſe that the King ſhall ſeize the Lands for the Alienation without Licence.

And if the King's Tenant hath Lands in ſeveral Counties, ſome holden of the King and ſome of other Lords, the Writ of Livery ſhall be directed unto the Eſcheator of that County where the Land which he holdeth of the King *in Capite* lieth, and the Writ ſhall begin, *Scias quod cepimus Homagium, &c.* and he ſhall have Writs unto the Eſcheators of the other Counties; and the Writ ſhall begin thus, *Cum ceperimus, &c.*

(*a*) So the Grantees of a Ward are made Parties; but ſee 43 *Ed.* 3. 20. where a *Sci' fa'* iſſued after the Return of the Commiſſion againſt the Grantee, to ſhew why he ſhould not have Livery; and the Grantee came and pleaded, that the Value of the Marriage was not ſatisfied to him, and prayed that he might hold the Land till he were ſatisfied, and the Heir did not deny the Plea, but went out of Court; and thereon the Grantee held the Land two Years, and then iſſued a *Scire facias* for the Heir againſt him, to have the Land; the Grantee pleads, that the Land was ſeized into the King's Hands, for that the Heir had not done his Homage, and the Verdict found that the Ward was leaſed by the King to the Grantee, rendring a Rent, and ſeized for the Non-payment; and after this, notwithſtanding, the Grantee ſued a *Valorem Maritag'* againſt the Heir, and adjudged that it lay: For ſeeing the Heir was found of full Age, he ought to have had Livery inſtantly, though the Value of the Marriage was not ſatisfied without any *Scire facias* ſued againſt the Grantee; and after Livery ſued, the Grantee has his Remedy for the Value of the Marriage, by ——— or Action; and therefore till Livery ſued, the Profits ſhall be to the King, and not ſet by way of Recompence for the Value of the Marriage. See 10 *H.* 6. 20.

(*b*) *Note*; *Bro. Fealty* 10 & 16. Where it is ſaid, that Feme Covert ſhall not do Services, but her Huſband for her; and therefore until Iſſue had between them the Homage is ſuſpended. See *Litt.* 18, 19.

Writ of Livery poſt mortem Patris & Matris.

WRIT of Livery after the Death of the Father and Mother, *&c.* lieth I where the Father and Mother hold ſeverally Lands in Fee of the King *in Capite*, and they die, their Heir of full Age, he may ſue any Writ of Livery to have Livery of the Lands of them both, and is not bounden to ſue ſeveral Writs, as ſeverally Heir to them; and the Form of the Writ is,

The King to his beloved N. *of* W. *his Eſcheator in the County of* S. *greeting: Know you, that we have received the Homage and Fealty of* R. *of* B. *Son and* [§ 258.] *Heir of* R. *of* B. *Eſquire, and* I. *his Wife deceaſed, due to us for all the Lands and Tenements which the ſaid* R. *and* I. *held of us in Chief the Days when they died, and have rendred to them thoſe Lands and Tenements with the Appurtenances: And therefore we command you, that having received Security of the ſaid* R. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* R. *to have full Seiſin of all the Lands and Tenements aforeſaid with the Appurtenances in your Bailiwick, and of which the ſaid* R. *and* I. *were ſeiſed in their Demeſne as of Fee on the Days when they died, and which, after the Death of the ſaid* R. *and* I. *were taken into our Hand; ſaving the Right of every one. Witneſs*, &c.

Writ of Livery after the Death of Tenant by the Curteſy.

THERE is another Form of Writ (*a*) after the Death of Tenant by the Curteſy, thus:

The King to his beloved, &c. *his Eſcheator in the County of* Lincoln, *&c. Know* A *you, that we have received the Homage of* G. *of* N. *Son of* I. *of* N. *deceaſed, for all the Lands and Tenements which the ſame* I. *held by the Law of* England *on the Day when he died, as of the Right of* N. *lately his Wife, now deceaſed, who held of us in Chief, the Mother of the ſaid* G. *whoſe Heir he is, due to us, and have rendred thoſe Lands and Tenements to him; And therefore we command you, that having received Security of the ſaid* G. *for his Relief to be paid to us at our Exchequer, you cauſe him the ſaid* G. *to have full Seiſin of all the Lands and Tenements aforeſaid with the Appurtenances, which, after the Death of the ſaid* I. *were taken into our Hand; ſaving the Right of every one. Witneſs*, &c.

(*b*) And thereby it appeareth, that the Tenant by the Curteſy ſhall have the Lands after the Death of his Wife, without ſuing an *Ouſter le main* for thoſe Lands holden of the King, but that the Heir after his Death ſhall ſue his Livery for them, *&c.* becauſe that the Tenant by the Curteſy doth remain Tenant to the King.

(*a*) See 12 *Ed.* 3. *Quare imp.* 159.

(*b*) *A.* takes *B.* to Wife, to whom Lands *in Capite* deſcend, and ſhe dies before Livery, and after Iſſue had, *A.* ſues Livery. *Dyer* 229.

And if a Man have Lands which are held of the King *in Capite* by the Curteſy, and he hath Lands in Fee, and dieth; his Heir ſhall ſue Livery as well for the Lands whereof the Tenant was ſeiſed in Fee, as for the Lands which he held by the Curteſy, although the Lands of which the Tenant by the Curteſy was ſeiſed in Fee were not holden of the King *in Capite*, *&c.* becauſe that as well thoſe Lands are ſeiſed into the King's Hands, as the Lands which he held by the Curteſy; and the Writ ſhall be ſuch: Stamf. Prærog. 5, 6. b. Bro. Livery 67. cont.

The King to his beloved, &c. *Eſcheator in the County of* York, *greeting: Know you, that we have received the Homage and Fealty of* G. *the Son and Heir of* W. *of* S. *and* I. *who was the Wife of the ſame* W. *of* S. *deceaſed, for all the Lands and Tenements which the ſaid* W. *of* S. *his Father held as well by the Law of* England *of the Inheritance of the ſaid* I. *ſome time his Wife, after the Death of her the ſaid* I. *as in his Demeſne as of Fee, on the Day when he died, and we have rendred to him thoſe Lands and Tenements; And therefore we command you, that having received Security of the ſaid* G. *the Son of* W. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* G. *the Son of* W. *of* S. *to have full Seiſin of all the Lands and Tenements aforeſaid with the Appurtenances, and which the ſaid* W. *of* S. *his Father held as well by the Law of* England *after the Death of the ſaid* I. *ſome time his Wife, as in his Demeſne as of Fee, in your Bailiwick, on the Day when he died, and which, after the Death of him the ſaid* W. *of* S. *were taken into our Hand; ſaving the Right of every one. Witneſs*, &c.

And if the King's Tenant dieth, and after his Death the Wife be endowed, then after the Death of the Tenant in Dower, the Lands which ſhe held in Dower ſhall be ſeiſed into the King's Hands, and the Heir ſhall ſue Livery of them; and the Writ ſhall be ſuch: 7 H. 6. 3. Stamf. Prærog. 13. a.

Writ of Livery after the Death of the Tenant in Dower.

B *THE King to his beloved* T. *of* S. *his Eſcheator in the County of* York, *greeting: Know you, that we have received the Homage and Fealty of our beloved and faithful* R. *Baron of* F. *due to us for all the Lands and Tenements which* A. *who was the Wife of* R. *of* N. *formerly the Wife of* R. *lately Baron of* F. *after the Death of the ſaid* R. *lately Baron of* F. *the firſt Huſband of her the ſaid* A. *the Grandfather of him the ſaid* R. *now Baron of* S. *held of us in Chief on the Day when ſhe died, and we have rendred to him thoſe Lands and Tenements; And therefore we command you, that having received Security of the ſaid* R. *now Baron of* F. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* R. *now Baron of* F. *to have full Seiſin of all the Lands and Tenements aforeſaid with the Appurtenances, which the ſaid* A. *held in Dower after the Death of the ſaid* R. *her Huſband the Grandfather of the ſaid now Baron, of the Inheritance aforeſaid in your Bailiwick, on the Day when ſhe died, and which, after the Death of her the ſaid* A. *were taken into our Hand; ſaving the Right of every one. Witneſs*, &c.

Stamf. Præ-
rog. 13. a. And by that it appeareth, that Tenant in Dower who is endowed in the Chancery, *&c.* of Lands holden of the King *in Capite*, or of other Lands which are in the King's Hands by the Death of his Tenant, that ſhe ſhall hold them of the King, and the Heir ſhall have Livery of thoſe Lands after her Death; yet it ſeemeth that the Reverſion of thoſe Lands which ſhe holdeth in Dower remaineth not in the King, but in the Heir; and if ſhe commit Waſte, the Heir ſhall puniſh the Waſte.

There is another Form of Writ of Livery after the Death of the King's Tenant, who holdeth Parcel in Fee, or Parcel in Tail, or for Life, thus: C

Writ of Livery after the Death of Tenant in Tail and Tenant for Life.

THE King to his beloved, &c. *his Eſcheator in the County of* Salop *and the Marches of* Wales *adjacent to the ſame County, greeting: Becauſe we have received the Homage and Fealty of our beloved and faithful* I. *of* B. *Son and Heir of* I. *of* B. *the elder, of all the Lands and Tenements with the Appurtenances which the ſame* I. *held of us in Chief, as well in Fee as for Term of his Life, on the Day when he died, and which, after the Death of the ſaid* I. *the Father,* [259.] *ought to deſcend to the ſaid* I. *the Son, or otherwiſe remain to the ſame* I. *the Son and* S. *his Wife, and to the Heirs of their Bodies iſſuing, and we have rendred to him thoſe Lands and Tenements; Therefore we command you, that having received Security of the ſaid* I. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* I. *the Son to have full Seiſin of all the Lands and Tenements aforeſaid with the Appurtenances, and of which the ſaid* I. *his Father was ſeiſed in his Demeſne as of Fee-tail, the Reverſion whereof belongs to the ſaid* I. *the Son, in your Bailiwick, on the Day when he died, and which, after the Death of his ſaid Father, were taken into our Hand; ſaving the Right of every one. Witneſs,* &c.

And if Tenant in Tail holdeth of the King *in Capite*, and dieth, the Heir then of full Age, he ſhall have ſuch Writ of Livery.

Writ of Livery for the Heir in Tail.

A THE King, &c. *Know you, that we have received the Homage and Fealty of our beloved* W. *&c. Son and Heir of* W. *of* B. *deceaſed, of all the Lands and Tenements which the ſaid* W. *his Father held of us in Chief to him and his Heirs of his Body iſſuing, of the Gift and Grant of* W. *of* S. *by a Fine thereof levied in our Court with our Licence, on the Day of his Death, and we have rendred to him thoſe Lands and Tenements; And therefore we command you, that having received Security of the ſaid* W. *&c.*

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within Age of eighteen Years, then he ſhall have a Writ to have Seiſin of the Lands, thus:

Writ of Livery for Lands by Petit Serjeanty.

B THE *King to his beloved,* &c. *his Eſcheator in the County of* Suffolk, *greeting: Becauſe we have received Information by the Inquiſition which we cauſed to be made by you, that* T. P. *deceaſed held of us in Chief in his Demeſne as of Fee, on the Day when he died, ten Meſſuages, one hundred Acres of Land, forty Acres of Meadow and ten Acres of Paſture, thirty Acres of Moor, and twenty Shillings Rent, with the Appurtenances in* W. *in the County aforeſaid, by the Service of twenty Shillings to be paid yearly to us at the Manor of* L. *for all Service, and that he did not hold any other Lands or Tenements in his Demeſne as of Fee, of us or of others in the County aforeſaid, on the Day when he died, and that* W. *the Son of the aforeſaid* T. *is the next Heir of the ſaid* T. *and of the Age of eighteen Years and more; We command you, that having taken Fealty of him the ſaid* W. *according to the Form of a certain Schedule incloſed in theſe Preſents, and having received Security from the ſaid* W. *for his reaſonable Relief to be paid to us at our Exchequer, you cauſe him the ſaid* W. *to have full Seiſin of the Meſſuage, Land, Meadow, Moor, and Rent aforeſaid, with the Appurtenances, which, by the Death of the ſaid* T. *were taken into our Hand; ſaving the Right of every one. Witneſs,* &c.

And thereby it appeareth, that the Heir in Socage ſhall not have Livery *cum exitibus, &c.* if he paſs the Age of fourteen Years; but within the Age of fourteen Years he ſhall have Livery *cum exitibus, &c.* and the ſame is holden for a Difference at this Day.

C The King's Tenant hath Iſſue a Son *D. de B.* and two Daughters, and dieth; and the ſaid *D. de B.* hath Livery, and afterwards hath Iſſue a Son *H. de B.* and dieth, the ſaid *H.* being in Ward to the King for his Nonage, and afterwards one Siſter hath Iſſue a Son, and dieth, and afterwards *H.* dieth being in Ward to the King, and his Aunt and the Son of the other Siſter, being of full Age, ſue to have Livery: Now they ought to have a Writ directed to the Eſcheator, by which it ſhall be commanded to the Eſcheator to make Livery to them, and to make Partition between them of thoſe Lands which are in the King's Hands, ſo as each Coparcener ſhall have Part of the Lands which are holden of the King *in Capite*; and the Writ ſhall be ſuch : Stamf. Præ-rog. 24. b.

Writ of Livery for the Aunt and Niece to make Partition.

THE *King to his beloved* A. *of* H. *his Eſcheator in the County of*, &c. *greeting: Know you, that we have received the Homage and Fealty as well of* D. *of* B. *the Son of* A. *of* B. *one of the Siſters of* D. *of* B. *as of* T. *of* B. *the other of the Siſters of the ſaid* D. *of* B. *Couſin and Heir of* H. *of* B. *Son and Heir of the ſaid* D. *of* B. *deceaſed, who held of us in Chief, due to us for all the Lands and Tenements which the ſaid* D. *of* B. *held in Chief, which by the Death of the ſaid* D. *of* B. *and by reaſon of the Minority of* H. *the Son and Heir of the ſaid* D. *of* B. *(which ſaid* H. *died while he was under Age and in our Cuſtody) came to our Hands*; *And we have rendred to the ſaid* D. *of* B. *and* T. *the Lands and Tenements aforeſaid, and therefore we command you, that having received Security of the ſaid* D. *of* B. *and* T. *for their reaſonable Reliefs to be paid to us at our Exchequer, and having made a legal Partition of all the Lands and Tenements with the Appurtenances in your Bailiwick, which by the Death of the ſaid* D. *of* B. *and by reaſon of the Minority of the ſaid* H. *came to our Hands, and yet remain in our Hand, according to the Extent thereof made, or to be again made (if it ſhall be neceſſary) into two equal Parts, in the Preſence of the ſaid* D. *of* B. *and* T. *or their Attornies in this Behalf, to be warned, if they will be preſent,* [260.] *you cauſe them the ſaid* D. *of* B. *and* T. *to have full Seiſin of their Parts thereof, according to that Partition, falling to them, according to the Law and Cuſtom of our Realm of* England, *ſaving the Right of every one: Provided always, that both the ſaid* D. *of* B. *and* T. *have Part of the Lands and Tenements which are holden of us in Chief and their own Purparty, and each of them be our Tenant, with the Appurtenances*, &c. *Witneſs*, &c.

And if a Man and his Wife hold a Manor of the King *in Capite* in Tail, A and die, and have Iſſue two Sons, and the younger Son is found Heir by Virtue of a Writ of *Diem clauſit extremum*, and of full Age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commiſſion, *&c.* it is found that the elder Brother is Son and Heir, *&c.* then upon the laſt Office found, the King ſhall ſend a *Scire facias* directed to the Sheriff, to warn him to ſhew why the Manor ſhall not be reſeized into the King's Hand, and he to anſwer the Profits received in the mean time. And if the Sheriff do return the Writ ſerved, and that the Party is warned, and doth not appear, then the King ſhall reſeize the Lands, and ſhall make Livery of that Manor unto the elder Brother; and the Writ by which the Service ſhall be made, ſhall be ſuch: Stamf. Prærog. 18 & 52.

(*a*) *Writ of Livery, and to make void a Livery made before.*

T*HE King to his beloved*, &c. *his Eſcheator in the County*, &c. *Whereas we have lately found by the Inquiſition of* H. *of* S. *our Eſcheator in the County aforeſaid, taken by our Command, and returned into our Chancery, that* I. *the Son of* H. B. *deceaſed, and* T. *his Wife (who ſurvived the ſaid* I. *ſome time her Huſband, likewiſe deceaſed) on the Days when they died held in Fee-tail to them and the Heirs of their Bodies iſſuing, the Manor of* I. *with the Appurtenances in the ſaid County, of us in Chief by Knight's Service, and that* T. *the Son of the ſaid* I. *and* T. *then was the next Heir of the ſame* I. *and* T. *and of full Age, we took the Homage and Fealty of him the ſaid* T. *due to us for the Manor aforeſaid, and rendred to him that Manor with the Appurtenances, and commanded it to be delivered to him, as by the Inſpection of the Rolls of our Chancery fully appears; and afterwards* H. B. *the Son and Heir of the ſaid* I. *and* T. *beſeeching us, that whereas by a certain other Inquiſition poſterior, taken by our Command by the ſaid Eſcheator, and returned into our Chancery, it is found that the ſaid* I. *and* T. *on the Days when they died held in Fee-tail to them and their Heirs of their Bodies iſſuing, the ſaid Manor with the Appurtenances of us in Chief by Knight's Service, in Form aforeſaid, and the ſaid* H. *the Son of the ſaid* I. *and* T. *of the Age of forty-ſix Years, is (the elder Brother of him the ſaid* T. *and) next Heir of them the ſaid* I. *and* T. *without this, that the ſaid* T. *is the next Heir to the ſaid* I. *and* T. *as is ſuppoſed by the ſaid firſt Inquiſition, we would reſume the ſame Manor with the Appurtenances into our Hands, and command it to be delivered to him the ſaid* H. *as the elder Brother of the ſaid* T. *and nearer Heir of the ſaid* I. *and* T. *And we, willing to be done in this Behalf that which is juſt, by our Writ commanded our Sheriff of our County aforeſaid, that he ſhould give Notice to the ſaid* T. *that he ſhould be before us in our Chancery in eight Days of Saint* Hilary *then next, whereſoever it ſhould be, to ſhew if he had or knew any thing to ſay for himſelf, why the ſaid Manor with the Appurtenances, together with the Iſſues thereof by him received, ought not to be reſumed into our Hand, and the ſame Manor delivered to the ſaid* H. *as the elder Brother of the ſaid* T. *Son and nearer Heir of them the ſaid* I. *and* T. *and why he ſhould not anſwer to us for the ſaid Iſſues ſo received by him the ſaid* T. *and further to do and receive what our Court ſhould conſider in this Behalf; and the ſaid Sheriff returned to us, that he gave Notice to the ſaid* T. *that he ſhould be before us in our Chancery at the ſaid Day, whereſoever it ſhould then be, to ſhew that which our ſaid Writ required; at which Day the ſaid* T. *being ſolemnly called in the Chancery aforeſaid, did not appear; wherefore it was conſidered, that the ſaid Manor with the Appurtenances, together with the Iſſues thereof received by the ſaid* T. *ſhould be reſumed into our Hand, and he ſhould anſwer to us for the ſame Iſſues, and the ſaid Manor* Stamf. 52.

(*a*) And *Note*; For Revocation of a Livery made on a falſe Inquiſition, as finding the Heir of full Age, when he was under Age. *Rot. Parl.* 42 *Ed.* 2. *m.* 2. the Caſe of *Wm. de Septran.*

ſhould be delivered to the ſaid S. *We have received the Homage and Fealty of the ſaid* H. *due to us for the Manor aforeſaid with the Appurtenances, and have rendred to him that Manor with the Appurtenances; We command you, that having reſumed into our Hand the ſaid Manor with the Appurtenances in your Bailiwick, together with the Iſſues aforeſaid, and having received Security of the ſaid* H. *for his reaſonable Relief, to be paid to us at our Exchequer, you cauſe him the ſaid* H. *without Delay to have full Seiſin of the Manor aforeſaid with the Appurtenances; ſaving the Right of every one, and ſaving to us the Iſſues of the Manor aforeſaid from the Time of the Death of the ſaid* T. *ſo received. Witneſs*, &c.

Writ of Livery and Partition which ſhall iſſue out of the Chancery unto the Eſcheator upon Partition there made.

THE Writ which ſhall be directed to the Eſcheator to deliver Seiſin of Lands unto one Coparcener, or divers, where any of them are within Age and in Ward, is made in ſeveral Manners: One Manner of Writ is, when one Coparcener is of full Age, and the other Coparcener is within Age, and in the Cuſtody of *P.* to whom the King hath committed the Wardſhip; then by the Aſſent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Eſcheator ſhall be ſuch: B

[261.] *The King to his beloved* I. *of* W. *his Eſcheator in the Counties of* Somerſet *and* Dorſet, *greeting: Know you, that by the Aſſent of* P. *&c. Guardians of* T. *of* M. *the Daughter of* A. *one of the Siſters of* T. *of* B. *deceaſed, who held of us in Chief, being within Age and in our Cuſtody, Couſin and one of the Heirs to whom one Purparty, and of* C. *the Siſter and other Heir of the ſaid* T. *of* B. *being of full Age, to whom the other Purparty, as well of the Lands and Tenements which were* Margery'*s, who was the Wife of* T. *of* B. *the elder, likewiſe deceaſed, held in Dower or otherwiſe for the Term of her Life, of the Inheritance of the ſaid* T. *of* M. *and* C. *on the Day which ſhe died, belong; We have aſſigned to the ſaid* C. *the Manors, Lands and Tenements underwritten,* viz. *The Manor of,* &c. *to have it for the Purparty of her the ſaid* C. *falling to her of all the Manors, Lands and Tenements aforeſaid, according to the Law and Cuſtom of our Realm, and we have rendred to her the ſaid* C. *(whoſe Homage and Fealty we have received) her Purparty aforeſaid; And therefore we command you, that having taken Security of the ſaid* C. *for her reaſonable Relief to be paid to us at our Exchequer, you deliver to the ſaid* C. *the ſaid Manor,* &c. *with the Appurtenances in your Bailiwick, to have for her Purparty aforeſaid; ſaving the Right of every one,* &c.

If the King's Tenant hath Iſſue *R. N.* his Son, and *Alice* his Daughter, and dieth, and afterwards *R. N.* hath Iſſue a Son *F.* and two Daughters *E.* and *C.* afterwards *R. N.* dieth ſeiſed, *F.* being within Age, and afterwards *F.* dieth ſeiſed in Ward to the King within Age; and after his Death it is found by virtue of an Office by Writ, that *E.* and *C.* are his Siſters and next Heirs, and of full Age; and afterwards by another Office it is found by Commiſſion, *&c.* that A

M. Son of the ſaid *Alice*, one of the Siſters of the ſaid *R. N.* and *J.* another Siſter of the ſaid *R. N.* Father of the ſaid *F.* was Couſin and next Heir to the ſaid *F.* and of full Age; upon which the Siſters of the ſaid *F.* came into the Chancery, and had a *Scire facias* againſt the ſaid *M.* Son of the ſaid *Alice*, and the ſaid *J.* &c. to ſhew wherefore they ſhould not have Livery of the Lands as Heirs, *&c.* And that Writ of *Scire facias* was made returnable the *Monday*, which was the ſecond Week of *Lent*; by which it appeareth, that the Writs which ſhall be ſued in Chancery, may be returned there in the Vacation Time, out of Term; and upon the Return of that *Scire facias*, the ſaid *M.* came and granted that he was not Heir, *&c.* whereupon the two Daughters *E.* and *C.* had Writ of Livery directed to the Eſcheator, reciting all the Matter, and reciting in the Writ, that the King had reſpited their Homage until a certain Day, commanding the Eſcheator that he make Partition betwixt them, and that he aſſign to each of them a Part of the Land which is holden of the King *in Capite*; which Writ ſhall be returned and inrolled in the Chancery; the which Writ is in the Regiſter, *fol.* 316.

Partition and Livery after the Death of Tenant by the Curteſy.

B IF it be found by Office by Virtue of a Writ, that *B.* held the Manor of *B.* by the Curteſy of *England*, in the Right of *E.* who was his Wife, which Manor is holden of *P.* by Knight's Service; and it be farther found by the ſaid Office, that *B.* is dead, and *M.* and *A.* are his next Couſins and Heirs, and one of them is within Age, and the other of full Age: Then he who is of full Age, ſhall have a Writ of Livery to the Eſcheator, that he take Security for the Payment of his Relief, and that he make Partition betwixt the two Heirs, *viz. M.* and *A.* in the Preſence of him who is of full Age, and in the Preſence of the *Prochein amies* of him who is within Age, and that he deliver Seiſin of his Part to him who is of full Age, and that he retain in the King's Hand the Part of the other Siſter. Which Writ ſhall be returned and inrolled in the Chancery, and that Writ appeareth in the Regiſter, *fol.* 317.

And the like Writ is in the Regiſter, where the King's Tenant dieth, one of his Daughters within Age, and the other of full Age, in the ſame *Folio* 317.

(*a*) *Partition and Livery for Lands in Socage.*

IF A Man holdeth Lands of *G.* in Socage, as of his Manor of *B.* which *G.* and the Manor is in the Ward of the King for the Nonage of *G.* and alſo he holdeth other Lands of other Lords by other Services, and dieth, and hath Ant. 256. D. Iſſue two Daughters, whereof one is within Age, and the other of full Age; they ſhall have Livery out of the King's Hands, *ſc.* the *Prochein amies* of the Heir within Age ſhall have *Livery cum exitibus*, and the other Daughter ſhall have *Livery ſine exitibus*, and a ſpecial Writ ſhall he directed unto the Eſcheator in that Caſe, reciting the whole Matter, and how that the King hath taken Fealty of her who is of full Age, and delivered to her her Part, commanding the Eſcheator by the Writ, that he take Security of her of full Age for her Relief, and that he make Partition between the Daughters of the Socage Land; and that he deliver the Part of the younger unto her *Prochein amies*, with the Iſſues and Profits of that Part from the Death of the Anceſtor; and that he intermeddle not with the Lands holden of the other Lords; which ſee in the Regiſter, *fol.* 318. C

[262.] Stamf. Pr. 53. If the King's Tenant hath Iſſue three Daughters, and he giveth Part of his Lands unto one of his Daughters in Frank-marriage, and one of the other two Daughters hath Iſſue within Age and dieth, and afterwards the Tenant in Frank-marriage dieth, his Heir of full Age, and then the King's Tenant dieth, and then by Office *virtutè Brevis* it is found, that the Daughter of the King's Tenant, and the Iſſue of the two Daughters are Heirs to the King's Tenant, and that the Iſſue of one of the Daughters is within Age; and afterwards by another Office it is found, that the King's Tenant gave Part of his Lands to one of his Daughters in Frank-marriage, for which upon that Office found, the other Daughter, and the Iſſue of the ſecond Daughter, who is within Age, have a *Scire facias* againſt the Iſſue of the Daughter who was advanced in Frank-marriage, to ſhew at a certain Day in the Chancery wherefore the Lands, of which the King's Tenant died ſeiſed, *&c.* ſhould not be delivered to them as Heirs only unto the King's Tenant; and if the Iſſue of her who was advanced in Frank-marriage, being warned by the *Scire facias*, and ſo returned warned by the Sheriff, maketh Default, or cannot ſhew Matter ſufficient to maintain her Title; then thereupon a Writ of Livery ſhall be awarded to the Eſcheator, rehearſing how that the King hath taken Homage and Fealty of the eldeſt Daughter, and that he hath rendred to her her Part, commanding the Eſcheator, that he take Security of the eldeſt Siſter to pay her Relief into the Exchequer, and that he make Partition in two equal Parts in the Preſence of the Parties, if they will come, and that he deliver Seiſin to the Siſter of full Age of her Part, and that he retain the other Part in the King's Hands for the Nonage of the Daughter of the other Siſter. See the Writ thereof in the Regiſter, *fol.* 320. A

(*a*) See a Partition repealed by Award of the King's Council on Examination of the Eſcheator, without making the Parcenors Parties. 27 *Ed.* 3. 83. See 42 *Aſſ.* 22. The Caſe of the Earl of *Pembroke.*

B If *A.* holdeth a Parcel of Lands in Socage of *B.* which *B.* is in Ward to the King, and alſo the ſaid *A.* holdeth another Parcel of Lands of *C.* in Socage, who is alſo in Ward to the King for Nonage, and alſo the ſaid *B.* holdeth other Lands of ſeveral other Lords by other Services, and afterwards the ſaid *A.* hath Iſſue ſeven Daughters, and afterwards one of the Daughters hath Iſſue within Age and dieth, and then *A.* dieth, and all that Matter be found by Office, then upon that Office returned, they ſhall have a Writ to the Eſcheator, commanding him that he take Fealty of the ſix Daughters for their Parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into ſeven Parts in the Preſence of the Parties, if they will be there, and that he deliver full Seiſin to the ſix Siſters of their Parts, and that he keep in the King's Hands the Part of her who is within Age, until the King otherwiſe command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are aſſigned for the Part of her within Age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot deſcend, and that he deliver the Iſſue and Profits of the Lands holden of other Lords, than of thoſe Lords who are in the Cuſtody of the King, to thoſe who of Right ought to have them. And after that this Writ is awarded to the Eſcheator, if the Eſcheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Siſters may ſue forth a new Writ to the new Eſcheator, reciting the whole Matter, and how the Eſcheator was removed before he had executed the Command unto him, commanding the new Eſcheator, that if the Partition be not made, that he do all ſuch Things as the other Eſcheator ought to have done, and retain in the King's Hands, *&c.*

C And then if the new Eſcheator, upon that new Writ, return unto the King in Chancery, that by Virtue of the ſaid Writ he hath made Partition of ſeven Parts of thoſe Lands, and that he hath retained in the King's Hands, the Part of her who is within Age, and that he hath delivered unto three of the Siſters their Parts, and that the other three Siſters did not come to take their Parts, ſo that they remain in the King's Hands; upon ſuch Return the ſaid three Siſters may come into the Chancery, and pray to have a Writ unto the Eſcheator, with the Tranſcript of the Partition to be incloſed therein, commanding him to take Security of them for their Reliefs, *&c.* and that he deliver to them their Parts appertaining unto them, according to the Partition made, retaining in the King's Hands the Part of her who is within Age, until he command to the contrary, and that he return the Writ, and what he hath done upon the ſame, under his Seal, fully and openly without Delay. See the Writ thereof in the Regiſter, *fol.* 319.

And it appeareth by the Regiſter, that if the King's Tenant hath Iſſue two Daughters, and one be within Age, and the other of full Age, and dieth, that ſhe who is of full Age may ſue unto the King to have the Cuſtody of her Siſter's Part during her Nonage, and to ſue Livery of the other Moiety: And thereupon ſhe ſhall have a ſpecial Writ unto the Eſcheator, rehearſing how the King hath taken her Homage, and hath aſſigned unto her the Moiety of the Lands, *&c.* which appertained unto her for her Part, and that he hath committed the Cuſtody of the other Part unto her, during the Nonage of the Heir the other Coparcener, commanding the Eſcheator by the

Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seiſin of the Moiety unto the Heir of full Age, until the full Age of the other Coparcener within Age, with the Iſſues and Profits of the other Moiety from the Death of the Anceſtor. And thereby it appeareth, [263.] that when the other Coparcener within Age cometh of full Age, they both ſhall ſue forth a new Livery jointly. See the Regiſter, *fol.* 320.

And it appeareth by the Regiſter, that if a Man hath Lands in *London* in A Fee, and hath Iſſue two Daughters, and leaſeth the Lands for Life, and dieth, and afterwards the Tenant for Life dieth, the Daughters of full Age, and all the ſame be found by Office; the two Daughters ſhall ſue forth a Writ of Livery for thoſe Lands, becauſe they are holden of the King in Burgage, and the Writ ſhall be directed to the Eſcheator, commanding him to make Partition of thoſe Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the ſame Writ he ſhall command the Eſcheator, that he retain the Part of her who is indebted in the King's Hands, until he hath other Command, and that he deliver the other Part unto the other Daughter: Reciting the ſame Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the ſame Writ the Eſcheator ſhall be demanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, *&c.* and that he return the whole Matter into the Chancery under his Seal, *&c.*

And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, and B hath Iſſue three Daughters, his Heirs of full Age, and another Woman who holdeth in Dower other Lands for Term of her Life of the Aſſignment of her Huſband, which Lands are alſo holden of the King *in Capite*, dieth, and the Reverſion of thoſe Lands are the Inheritance of the ſaid Daughters; they ſhall have one Writ of Livery unto the Eſcheator for all thoſe Lands, reciting the whole Matter, and how that he hath taken their Homage and Fealty, or that he hath reſpited the ſame till a certain Day, *&c.* and that he render to them their Parts, commanding the Eſcheator, that he take Security of them for to pay their Reliefs, *&c.* and that he make equal Partition between them in their Preſence, if they will appear, and that he give full Seiſin to each of them of their Parts; with ſuch a Proviſion, that each of them ſhall have Part of that Rent which is ſo holden of the King *in Capite* for her Part, ſo that each of them be Tenant to the King, *&c.* And it appeareth by that Writ, that a Rent may be holden of the King by Knight's Service *in Capite*, as well as Lands. See the Regiſter, *fol.* 318.

Writ de Dote aſſignanda.

C THE Writ *de Dote aſſignanda* lieth where it is found by Office, that the King's Tenant was ſeiſed of Tenements in Fee or in Fee-tail the Day he died, *&c.* and held of the King *in Capite*; then the Wife may and ought to come into the Chancery, and there make Oath that ſhe will not marry without the King's Licence: And thereupon the King may aſſign her Dower in the Chancery of thoſe Manors and Lands, (*a*) and thereupon ſhe ſhall have a Writ unto the Eſcheator where the Lands are, which ſhall be ſuch: Ant. 274.

The King to his Eſcheator in the County of B. *greeting: Know you, that of the Lands and Tenements which were* N.*'s deceaſed, who held of us in Chief, and which, by reaſon of the Death of him the ſaid* N. *are taken into our Hand, we have aſſigned to* I. *who was the Wife of the ſaid* N. *the third Part of the Manors of* T. *and* C. *in the County of* T. *with the Appurtenances, and alſo a third Part of the Purparty which was his the ſaid* N.*'s of the Court of the Liberty of the Honour of* Wincheſter, *and the View of Frank-pledge in the ſaid County of* T. *to have for her Dower falling to her of the Manors and Purparty aforeſaid, according to the Law and Cuſtom of our Realm of* England; *and alſo by the Aſſent of* Edward *Prince of* Wales, *our moſt dear Son, to whom the Cuſtody of the Manor of* R. *in the County of* Buckingham, *which to fifty Pounds by the Year, and the Manor of* N. *with the Appurtenances in the ſaid County of* B. *which to ten Pounds by the Year extend, as is found by the Extents thereof made by our Command, returned into our Chancery; we have aſſigned to the aforeſaid* I. *the ſaid Manor of* N. *with the Appurtenances, for her Dower of the ſaid Manors of* R. *and* N. *to have in Form aforeſaid; and therefore we command you, that you deliver to her the ſaid* I. *the ſaid Manor of* N. *with the Appurtenances, to have for her Dower, as before is ſaid. Witneſs*, &c.

D And when the Wife hath made her Oath in the Chancery, ſhe may have a Writ of *Dote aſſignanda* to the Eſcheator, to aſſign her Dower; and the Writ ſhall recite, that ſhe hath made her Oath in the Chancery, *&c.* But the Uſe is to make the Aſſignment of the Dower in the Chancery, and to award a Writ unto the Eſcheator, to deliver the Lands aſſigned unto her; and although the (*b*) King doth commit the Cuſtody of the Land unto another, yet the King may aſſign Dower unto the Wife in Chancery, and ſhe ſhall have a Writ unto the Eſcheator to deliver unto her that Dower, as appeareth by the Regiſter. And the Writ ſhall be ſuch:

The King to his Eſcheator, &c. *greeting: Whereas amongſt other Lands and Tenements by us aſſigned to* I. *who was the Wife of* N. *deceaſed, (who held of us*

(*a*) See *Rot. Finium*, 1 *Ed.* 1. *M.* 21. a Command to the Eſcheator to ſeize all the Lands whereof *A.* was ſeiſed, *ac etiam quod Margeria quæ fuit uxor præa'* A. (20 *Merc' de Terra*) *de Terris & Tenementis prædictis aſſignari faciat donec Rationabilem Dotem ipſam contingent' ſecundum Legem & conſuetudinem ſibi fecerit aſſignari.* Et Rot. Clauſ. 2 Ed. 1. M. 15. accordant.

(*b*) See *Kelway* 133. it ſeems the Committee cannot aſſign Dower; *Quære tamen*, if it be not good until the Heir ſues his Livery.

in Chief) of the Lands and Tenements which were the ſaid N.'*s for Dower, we have aſſigned to her the ſaid* I. *Part of the Manor of* Grouby *with the Appurtenances in the County aforeſaid, and alſo a third Part of the Purparty which was his the ſaid* N.'*s of the Court of the Liberty of the Honour of* W. *and the View of Frank-pledge in the ſame County, to have for Dower in Form aforeſaid: We command you, that you cauſe to be aſſigned and delivered to her the ſaid* I. *(whoſe Oath we have received that ſhe will not marry without our Licence) the ſaid third Parts in your Bailiwick, in the Preſence of the Guardian of the ſaid Manor and third Part, to be warned by you, if he or his Attorney will be preſent in this Behalf, to have in Dower as before is ſaid; and when that Aſſignment,* &c. *Witneſs,* &c. And if the Wife after the Death of the Huſband doth come into Chancery, and prayeth her Dower there; the King may grant a Writ unto [264.] the Eſcheator, commanding him to take Security of the Wife, that ſhe do not marry herſelf, and that the Eſcheator do aſſign Dower unto her. And the Writ ſhall be ſuch:

The King to his Eſcheator, &c. *We command you, that having taken the Oath of* M. *(who was the Wife of* W. *deceaſed, who held of us in Chief) that ſhe will not marry herſelf without our Licence, you cauſe to be aſſigned to her reaſonable Dower of all the Lands and Tenements which the ſaid* W. *ſome time her Huſband, held in his Demeſne as of Fee, in your Bailiwick, on the Day when he died, and which after the Death of the ſaid* W. *were taken into our Hand, and in our Hand ſo remain, according to the Law and Cuſtom of our Realm of* England *falling to her, by the Extent thereof made, or by other, if it ſhall be neceſſary again to be made, in the Preſence of* B. *to be warned thereof by you, if he will be preſent; and when you ſhall have ſo made that Aſſignment, ſend it under your Seal diſtinctly and openly, that we may cauſe it to be inrolled in the Rolls of our Chancery, as the Cuſtom is. Witneſs,* &c.

A And if a Man dieth ſeiſed of Lands which are holden by Knight's Service, of any Manor, or otherwiſe, as in any Abbey, Biſhoprick or Priory, or ſuch as are in the King's Hands by Reaſon of the Vacancy of the Abbey or Biſhoprick, *&c.* then if the Wife will have Dower, ſhe ought to ſue in the Chancery to have ſuch Writ directed unto the Eſcheator, to aſſign her Dower; but there the Wife ſhall not make Oath, that ſhe ſhall not marry without the King's Licence, as appeareth by the Writ which is ſuch:

The King, &c. *We command you, that,* &c. *to* A. *who was the Wife of* B. *deceaſed, who held (of the Abbey of* Peterborough *lately void, and being in our Hand) by Knight's Service, her reaſonable Dower of all the Lands and Tenements,* &c. *which the ſaid* B. *her Huſband held of the Abbey aforeſaid, in your Bailiwick, on the Day when he died, and which, after the Death of him the ſaid* B. *are in our Hand,* &c. (as above.)

B Ad the like Writ may be ſued by the Wife for Lands, which her Huſband held by Knight's Service of the Manor of him, who is in the Ward to the King by Reaſon of his Nonage; but there ſhe ſhall not make Oath, that ſhe will not marry herſelf, no more than in the Caſe before.

And the King may aſſign Lands in Dower in the Chancery, rendring Rent yearly to the King, *&c.* becauſe the Lands do exceed the very Value of the third Part of all the Tenements whereof ſhe ought to have Dower. And then upon that Aſſignment made in Chancery ſhe ſhall have and ſue ſuch Writ to the Eſcheator.

The King to his Eſcheator, &c. *Know you, That of the Lands and Tenements which were* E.'*s of* B. *deceaſed, who held of us in Chief*; *and which by Reaſon of the Death of the ſaid* E. *are taken into our Hand, we have aſſigned to* M. *who was the Wife of the ſaid* E. *the Manors underwritten, to wit, the Manors of* B. *and* C. *&c. with the Appurtenances in your County, which are extended to one hundred Pounds by the Year, to have for Dower falling to her of the Lands and Tenements aforeſaid, according to the Law and Cuſtom of our Realm of* England, *rendring thereof to us yearly at our Exchequer, ſo much as it exceeds the Dower aboveſaid*; *and therefore we command you, that you deliver to her the ſaid* M. *the ſaid Manors with the Appurtenances, to have to her for her Dower in Form aforeſaid. Witneſs*, &c.

C And if the Wife be impotent, ſo as ſhe cannot come into the Chancery to make Oath, and to demand her Dower, then ſhe may ſue a ſpecial Writ directed to certain Perſons to take her Oath, and to receive Attorney for the Wife to ſue for her Dower in the Chancery, *&c.* and the Writ appeareth in the Regiſter. *fol.* 298.

D And if the King make Livery unto the Heir at his full Age, ſaving unto the Wife her Dower to be aſſigned by the King; then if the Wife will demand Dower, ſhe ought for to ſue for the ſame in the Chancery; and if ſhe do demand her Dower there, then ſhall iſſue a ſpecial Writ unto the Eſcheator, that he warn the Heir for to be in Chancery at a certain Day, *&c.* and there the Wife ſhall have the ſame Day to receive her Dower, *&c.* And the Writ which ſhall iſſue againſt the Heir ſhall be ſuch:

The King to his Eſcheator, &c. *Whereas Lord* Edward *lately King of* England *our Father, on the twentieth Day of* January *laſt paſſed, received the Homage of* T. *of* B. *the Son and Heir of* T. *of* B. *deceaſed, for all the Lands and Tenements which the ſame* T. *his Father held on the Day when he died, of our ſaid Father*, &c. *and he rendred thoſe Lands and Tenements, and commanded them to be delivered to him, ſaving the Right of every one, and ſaving to* M. *who was the Wife of the ſaid* T. *her reaſonable Dower falling to her of the Lands and Tenements aforeſaid, according to the Law and Cuſtom of our Realm of* England, *and to be aſſigned to her as the Cuſtom is, as appears to us by the Inſpection of the Rolls of the Chancery of our ſaid Father*; *and the ſaid* M. *hath beſought us, that we would cauſe to be aſſigned to her, her Dower falling to her of the Lands and Tenements aforeſaid, according to the Law and Cuſtom of our Realm of* England; *wherefore we gave Day to the ſaid* M. *that ſhe be in our Chancery on the Morrow of All Souls*, &c. *whereſoever*, &c. *to receive her Dower aforeſaid: We command you that you give Notice to the ſaid* T. *that at the ſaid Day he may be preſent at the Aſſignment of the Dower aforeſaid, if it ſhall ſeem to him expedient*; *and have there the Names*, &c. *and this Writ. Witneſs*, &c.

But if the King maketh Livery unto the Heir by his Writ directed to the Eſcheator, by which Writ he commandeth his Eſcheator to deliver unto him Seiſin of all his Lands, *&c. ſaving the Right of every one*; and he putteth not in the Writ theſe Words, *ſaving to* M. *who was the Wife*, &c. *her reaſonable* [265] *Dower, falling to her of the Lands and Tenements*, &c. *and by us to be aſſigned*:

Then in that Caſe the Wife ought to ſue her Writ of Dowry againſt the Heir, if ſhe will demand Dower of thoſe Lands, becauſe the King made Livery generally of Lands by his Writ, without any Reſervation of Dower to be aſſigned by him, *&c.*

A And if the King make a Reſervation of Dower to be aſſigned by him by his Writ of Livery which is directed to the Eſcheator, if the Wife never demand Dower, or if ſhe hath Dower aſſigned unto her by the King in Chancery; yet after the Aſſignment made by the King, the Reverſion thereof is in the Heir, and he ſhall not ſue Livery of that Reverſion after the Death of the Tenant in Dower, becauſe the Writ of Livery doth not reſerve any Thing to the King, but Aſſignment of Dower to the Wife; but the Writ doth command the Eſcheator to deliver Seiſin of all the Land, and that the Eſcheator doth, and by that the Livery of all the Land paſſeth from the King; and therefore it followeth, that when the Wife is aſſigned her Dower by the King in Chancery, that yet the Reverſion doth remain in the Heir, *&c.* for which he ſhall not ſue a new Livery of that Reverſion after the Death of the Tenant in Dower, *&c.* *Tamen quære* of that Caſe.

If the Land aſſigned to the Wife be evicted, ſhe ſha'l have a Scire facias to reſeize the Land, and ſhall be new endowed. 43 Aſſ. 32. Br. Dower 65.

B (*a*) And if the Wife be aſſigned Dower in the Chancery, and afterward it is ſurmiſed by the Heir, or by another for the King, that the Land aſſigned to the Wife is not extended to the very Value, but that the Land aſſigned to her is much more in Value than it is extended at, and that the Lands which remain in the King's Hands are extended to the very Value, *&c.* then the King ſhall ſend a Writ to the Eſcheator to make a new Extent: And upon that Writ returned, if it be found that the Land aſſigned to the Wife is of greater Value, *&c.* then upon Return thereof a *Scire facias* ſhall be awarded againſt the Wife, to ſhew Cauſe wherefore ſhe ſhall not be anew endowed, *&c.* and if ſhe be warned, and maketh Default, it ſeemeth ſhe ſhall be new endowed for her Default; or if ſhe appear, and cannot ſay any Thing contrary to that new Extent, ſhe ſhall be endowed anew, ſo as Part of the Land aſſigned to her, ſhall be taken from her at the King's Pleaſure; or (*b*) the King may make a new Aſſignment of all that ſhe had in Dower, if he pleaſeth, and a new Writ ſhall be to the Sheriff to deliver her Seiſin thereof ſo newly aſſigned to her: *Quære* the Uſe of this Point.

Ant. 274.

C And if the Wife make Oath, that ſhe will not marry herſelf without the King's Licence, and is endowed upon the ſame, *&c.* and afterwards ſhe marrieth without Licence, *&c.* then the King ſhall ſend a Writ to the Eſcheator, that he reſeize all the Lands which ſhe holdeth in Dower, as appeareth by the Regiſter, and not all the other Lands which ſhe or her Huſband had in their own Right; and the Writ is ſuch:

(*a*) So if the Wife's Dower be evicted by a Title Paramount on the Record carried into Chancery, whereby ſhe was evicted, ſhe may have a *Scire facias* to reſeize the Land, and to be newly endowed of the Reſidue tho' it be after Livery made to the Heir. 43 *Aſſ.* 32.

(*b*) See alſo that if Dower be aſſigned to the Wife within Age in Chancery, and afterward Livery is made to the Heir, ſhe may have a Writ of Dower of the Reſidue. 18 *Ed.* 3. 29.

The King to his Eſcheator, &c. *Whereas* A. *who was the Wife of* I. *of* B. *deceaſed, who held of us in Chief, who lately made a corporal Oath that ſhe would not marry herſelf without our Licence, hath already married herſelf to* W. *of* P. *not having obtained our Licence for this Purpoſe, as we have received Information; We being unwilling that ſuch Contempt ſhould paſs unpuniſhed, and alſo willing to ſee that we ſuffer no Damage in this Behalf, command you, that if it is ſo, then without Delay take into our Hand all the Lands and Tenements which the ſaid* W. *and* A. *hold for the Dower of her the ſaid* A. *of the Inheritance of the ſaid* I. *in your Bailiwick, ſo that you may anſwer to us for the Iſſues forth coming thereof at our Exchequer, until we ſhall be ſatisfied for the Forfeiture to us thereof belonging, or we ſhall be moved to give you other Matter in Charge thereupon. Witneſs*, &c.

Writ de Levari ſacias.

D THE Writ of *Levari facias* is a Writ which ſhall iſſue out of the Record, and ſhall iſſue ſometimes out of the Chancery, and ſometimes out of other Courts where the Record is. As if a Man be bounden in a Recogniſance in the Chancery in twenty Pounds, to be paid at the Feaſt of Saint *Michael* next following, then if he do not pay the Money at the Day, a *Levari facias* ſhall be directed to the Sheriff, that he levy the Sum on his Goods and Chattels; and the Form of the Writ is ſuch:

E *The King to the Sheriff*, &c. *Becauſe* I. *the Son of* B. *ought to have paid to* M. *of* B. *twenty Pounds on the Feaſt of Saint* Michael *in the Year of our Reign*, &c. *as* (*a*) *appears to us by the Inſpection of the Rolls of our Chancery, and hath not yet paid the ſame to him, as he ſays; We command you, that without Delay you cauſe the ſaid Money to be levied of the Lands and Chattels of him the ſaid* I. *in your Bailiwick, ſo that you may have the ſame in our Chancery on the Morrow of the Nativity of Saint* John *the Baptiſt next coming, whereſoever it ſhall then be, to be there delivered to the ſaid* M. *and this you may by no means omit: And have there this Writ*, &c.

F And he may have an *Alias* and a *Pluries*, *Vel cauſam nobis ſignifices*, directed to the Sheriff; and if he will not return the Writ, he ſhall have an Attachment againſt the Sheriff. And this Writ is given by the Common Law before the Statute of (*b*) *Weſt*. 2. which gave the Writ of *Elegit*. But this Writ

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(*a*) If the Record be ſent *coram Rege*, and there is a Writ of *Scire facias* to execute it, the Writ ſhall be, *Sicut conſtat nobis per Record' quod in Cancellaria noſtra venire fecimus.* 17 Ed. 3. Brief 824.

(*b*) See accordant *per Trew*. 8 *Ed*. 3. 44. but adjudged *contr. viz.* That if the Year be paſſed after the Date of the Recogniſance, though it be within the Year of the Day for Payment, he is put to a *Scire facias*. For *per Ston*. the Words of the Stat. *Weſt*. 2. *Si recens ſit Recognitio*, do relate to the Day of making the Recogniſance, and not to the Day of Payment; yet ſee 8 *Co.* — *contr. ideo quære.* 21 *Ed*. 3. 22. but clearly, if the Day of Payment be limited by Defeaſance to be ten Years after, there after the ten Years, he muſt ſue a *Scire facias*. (*Note*; The Defeaſance is out of the Record.) *Vide infra* 266. C. And *Note* 16 *Ed*. 3. *Scire facias* 41.

ought to be ſued within the Year after the Day of Payment to be made by
the Recogniſance; for after the Year and Day of Payment to be made, if he
do not ſue forth this Writ, then he ought to have a Writ of Debt before the
Statute of *Weſt.* 2. which gave the *Scire facias* againſt him who was ſo bounden
by Recogniſance; but now by that Statute he ſhall have the Writ of *Scire fa-
cias* to make him come at a certain Day into the Chancery, to ſhew what he
can ſay why he ought not to pay the Sum, *&c.* And if the Sheriff upon the H
Levari facias return, that he hath levied ten Pounds of the Sum, *&c.* which
he hath delivered to the Party, *&c.* then upon that Return he who ought for
[266.] to have the Money, may ſue forth a *Sicut alias levari facias* directed to the
Sheriff to levy the Reſidue of the Sum; which Writ ſhall be ſuch:

The King to the Sheriff, &c. *Becauſe* T. *the Abbot of* B. *ought to have paid to* R. *one hundred Pounds*, &c. *on the Feaſt of*, &c. *in the Year*, &c. *as appears to us*, &c. *and did not pay the ſame*, &c. *wherefore we commanded you, that without Delay you ſhould cauſe the ſaid Money to be levied of the Lands and Chattels of him the ſaid Abbot in your Bailiwick, ſo that you might have the ſame in our Chancery*, &c. *whereſoever*, &c. *to be there delivered to the ſaid* R. *and you returned to us, that you have taken into your Hand at divers Times, of the Goods and Chattels of the ſaid Abbot to the Value of*, &c. *which you levied thereof, and have cauſed the ſaid* R. *to have; We command you, that without Delay you cauſe to be levied the Reſidue of the ſaid Debt of the Lands and Chattels of him the ſaid Abbot in your Bailiwick, ſo that you may have it before us from the Day of*, &c. *whereſoever*, &c. *to be there delivered to the ſaid* R. *and this you may by no means omit*, &c. *Witneſs*, &c.

And if a Parſon be bounden in a Recogniſance in Chancery in two hun- A
12 H. 4. 17. dred Pounds, to pay at a certain Day, *&c.* and he doth not pay the ſame at
13 H. 4. 17. the Day, then the Recogniſee ſhall have a *Levari facias* directed to the Biſhop,
or a *Levari facias* directed to divers Biſhops, to levy the Money of his ſpiritual Goods; and the Writ ſhall be ſuch:

The King to the venerable Father in Chriſt, &c. *greeting: Becauſe* I. *Parſon of the Church of* S. *in the County of* H. *of your Dioceſe, and* T. *of* L. *Parſon of the Church of* M. *in the County of* B. *in the Dioceſe of* Lincoln, *ought to have paid to Maſter* F. *two hundred Pounds on the Feaſt of All Saints*, &c. *in the Year*, &c. *as appears*, &c. *as he ſaith; We command you, that without Delay you cauſe to be levied one hundred and fifty Marks of the ſaid Sum, of the Goods and Chattels of him the ſaid* I. *in your ſaid Dioceſe, ſo that we may have the ſame one hundred and twenty Marks in our Chancery*, &c. *whereſoever*, &c. *to be there delivered to the ſaid* F. *and this you may by no means omit: And have there this Writ. We have alſo commanded* W. *Biſhop of* Lincoln, *that he cauſe to be levied one hundred and fifty Marks*, &c. *the Reſidue of the Eccleſiaſtical Goods of him the ſaid* T. *in the ſaid Dioceſe, in Form aforeſaid. Witneſs*, &c.

But if the Parſon hath Lands of his own Purchaſe, he may have a Writ to the Sheriff to levy the ſame, *&c.* But now by the Statute of *Weſt.* 2. *cap.* 18. he may ſue forth an *Elegit* upon the Recogniſance made in the Chancery, directed to the Sheriff, to have Execution of the Moiety of his Lands, and of all his Goods and Chattels, except his Beaſts of the Plough, and to deliver them to the Heir for his Maintenance; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. *Becauſe* R. *on the* 11*th Day of* February *laſt paſt in our Chancery acknowledged himſelf to owe to* N. *twenty Pounds, which he ought to have paid to him on the Feaſt of*, &c. *then next following, as appears by*, &c. *of our Chancery, and hath not yet paid the ſame to him, as he ſaith; and the ſame* N. *according to the Statute thereof ſet forth, hath choſen to be delivered to him for the ſaid twenty Pounds, all the Chattels and the Moiety of the Land of him the ſaid* R. *to be holden according to the Form of the ſaid Statute, by a reaſonable Appraiſement thereof (except the Oxen and Beaſts of the Plough) to be made in the Preſence of the ſaid* R. *to be warned thereof by you, if he will be preſent, cauſe the ſame to be delivered to the ſaid* N. *or his certain Attorney, and if thoſe Chattels are not of ſufficient Value of the ſaid twenty Pounds, then cauſe thoſe Chattels, ſo of leſs Value, by a reaſonable Appraiſement, and alſo the Moiety of the Land of him the ſaid* R. *in your Bailiwick by Extent, in like Manner to be made in your Preſence in Form aforeſaid, to be delivered to the ſaid* N. *or his ſaid Attorney, to be holden as his Freehold, until the ſaid Debt ſhall be thereof levied, and of that which you ſhall have done thereupon, make it appear diſtinctly and openly to us in our ſaid Chancery (ſuch a Day) whereſoever it ſhall then be, under your Seal; and have there this Writ. Witneſs*, &c.

C (*a*) And after the Year and the Day of Payment paſſed of the Recogniſance, the Recogniſee ought for to ſue a *Scire facias* againſt the Recogniſor, to ſhew what he can ſay why the Recogniſee ſhould not have Execution; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot ſay any Thing wherefore he ſhould not have Execution, then the Recogniſee may ſue forth the Writ of *Elegit* to have Execution of all his Goods, and of the Moiety of his Lands: And if the She- Vide 265. G.

(*a*) *Note*; If the Party to a Judgment or Recogniſance be returned dead, a *Scire facias* ſhall iſſue firſt againſt the Executors, and if he has no Executors, or if they have not Aſſets, then a *Scire facias* ſhall go againſt the Heir, 7 *H.* 4. 30. 19 *R.* 2. *Execution* 163. and by ancient Uſage, until the Heir was returned dead, or *Nihil*, no *Scire facias* went againſt the Tertenants. 18 *Ed.* 2. *Execution* 142. But he may have a *Scire facias* againſt the Executors, Heirs and Tertenants in the ſame Writ, if he will. 2 *Co.* 12. Sir *William Herbert*'s Caſe. And as to the Heir, 1. He muſt be ſaid to have Lands in Fee ſimple by Deſcent, otherwiſe the *Scire facias* will be but as againſt a Tertenant. 27 *H.* 6. *Execution* 135. 2. It ought to be *Tenentibus Terrar' quæ fuer'* the Conuſees the Day of the *Recogn'*, or afterwards. 46 *Ed.* 3. *Brief* 605. 3. In a *Scire facias* upon a Recogniſance in *C. B.* he ought to name all the Tertenants at his Peril. (*Quære.*) But it is otherwiſe, *alibi.* 46 *Ed.* 3. *Brief* 605. 20 *Ed.* *Scire facias* 121. 17 *Ed.* 2. *Execution* 139, &c. But now it ſeems he may have a *Scire facias* againſt the Tertenants generally without naming them, and without warning the Heir or Executor, except the Heir has Lands. *Raſt. Entr.* 446. *Dyer* 208. *Regiſt.* 57. 7 *R.* 2. *Execution* 46, 406.

Scire facias C. *Tenenti Terrarum quæ fuer' prædict'* A. the Conuſor, &c. *quare prædict' ſumma de* ——— *de Terris & Catallis ſuis levari*, &c. And the Writ adjudged good, though the Words *& Catallis* had not been therein. 30 *Ed.* 3. 23. It ſeems he ſhall not have a *Scire facias* againſt the Tertenants, till a *Scire facias* ſued againſt the Executors, and *Nihil* returned. 7 *H.* 4. 31. 19 *R.* 2. *Execution* 163. And *Note*; A *Scire facias* and a *Teſtatum* in another County, amount to a *Scire facias*. 18 *H.* 6. 17. *Execution* 3. And if any other be Tertenant, who is not returned warned, the *Scire facias* ſhall be againſt him, and ſo he may delay Execution. 41 *Ed.* 3. *Execution* 37. And if the one comes and pleads, but the other makes Default, Judgment ſhall not be given on the Default, till the Plea be determined. 6 *Ed.* 3. 15. *Execution* 103. And if on the Iſſue it be found againſt the Tenant, yet no Land ſhall be put in Execution, but only the Land of the Conuſee in his Hands. 33 *Ed.* 3. *Execution* 162. See *Raſt.* 64.

riff return the *Elegit*, that the Recogniſor hath made a Feoffment in Fee of Part of the Lands to divers Tenants, *&c.* and that he hath infeoffed the King of the Reſidue; then upon that Return the Lands whereof the King is ſeiſed by that Feoffment are diſcharged. But he may ſue a *Scire facias* to warn the other Tenants to appear at a certain Day, to ſhew Cauſe wherefore the ſaid Lands ſhall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot ſay any Thing, *&c.* to bar the Execution, then the Recogniſee ſhall have Execution againſt them of thoſe Lands by Writ of *Elegit*, *&c.* but he ſhall have the *Elegit* before that he ſueth the *Scire facias* againſt thoſe Tenants.

D And if a Man be bounden by Recogniſance in the Chancery, and the Recogniſor hath certain Indentures of Defeaſance; then, if the Recogniſee will ſue Execution upon the Recogniſance, the Recogniſor may come into the Chancery, and ſhew the Indentures of the Defeaſance, and that he is ready to perform them, and thereupon he ſhall have a *Scire facias* againſt the Recogniſee returnable at a certain Day in the Chancery; and in the ſame Writ he ſhall have a *Superſedeas* directed to the Sheriff, that in the mean time he do not Execution by Virtue of the Writ ſued forth by the Recogniſee. And if the Sheriff upon any ſuch Writ return, that he hath ſent to the Bailiff of [267.] the Liberty to do Execution, which Bailiff hath returned him no Anſwer; then upon that Return he ſhall (*a*) have a new Writ directed to the Sheriff, with a *Non omittas* therein, that he enter the Franchiſe and do Execution, *&c.*

A And a Man may ſue Execution by *Scire facias* upon a Recogniſance made in the Time of another King in the Chancery, or in the Common Pleas, or in any Court of Record. And the King may by his Commiſſion give Authority to one to receive a Recogniſance of another Man, and to return the ſame into the Chancery; and by Virtue of that Commiſſion, if a Man doth before the Commiſſioners acknowledge a Debt to be paid to another at a certain Day, *&c.* and certify the ſame into the Chancery with the Commiſſion, *&c.* then upon the Certificate thereof, if he do not pay the Debt at the Day, he ſhall have an *Elegit* upon the Conuſance ſo taken, as well as if it were taken in the Chancery; and the Form of the Commiſſion is ſuch:

The King to his beloved and faithful R. *of* M. *greeting: Know you, that we have given you Power of receiving the Recogniſance which* I. *of* H. *ſhall be willing to make before you to* G. *of* T. *of any Sum of Money whatſoever; And therefore we command you, that when you ſhall have received that Recogniſance, you do certify us in our Chancery, under your Seal diſtinctly and openly, thereof, and of the Day or Days of Payment, and alſo of the Day of taking the ſame, ſending to us this Writ. Witneſs*, &c.

And there is another Form, thus: *The King*, &c. *Know you, that we have given you Power of receiving for this Time, in our Name, the Recogniſance which* I. *of* T. *ſhall be willing to make before you of any Debt whatſoever; And therefore we command you, that when you ſhall have received that Recogniſance, you certify us*, &c. *thereof under your Seal diſtinctly and openly*, &c.

(*a*) So it was done where Beaſts had been detained, and no Delivery made to the Plaintiff. *Raſt. Entr.* 546. See 12 *Ed.* 3. *Scire facias* 117. 2 *Ed.* 3. *Execution* 129. 14 *Ed.* 3. *Execution* 73.

And by that Commiſſion he hath general Authority to take Recogniſance of any Man who will acknowledge any Debt before him to any Perſon whatſoever, *&c.*

B If a Man be bounden in Recogniſance in one hundred Pounds, to pay at five ſeveral Days twenty Pounds, then immediately after the firſt Day of Payment is paſt, he may ſue an *Elegit* for twenty Pounds, and at the ſecond Day he may ſue another *Elegit* or *Levari facias* of other twenty Pounds, and ſo of all the twenty Pounds, every Day of Payment, and he ſhall have ſuch Writ of *Elegit* for the Payment that ſhall be made at that Day, and ſhall not ſtay his Suit till all the Days of Payment are paſt.

See before 130. H.

So note, that Capias ad ſatisfaciend. lieth not upon a Recogniſance. 34 H. 6. 45. 48 Ed. 3. 14. 10 Ed. 3. Execution 137.

V. 38 Ed. 3. 12. Br. Execution 42.

C (*a*) And if two be bound in Recogniſance in Chancery, *to wit, Every one of them for the whole acknowledged himſelf to owe*, &c. he may ſue ſeveral *Scire facias* againſt them to have the Money levied of their Goods and Lands, *&c.*

D If a Man be bound in a Recogniſance in Chancery, or other Court of Record, and afterwards the Recogniſee dieth, his Executors may ſue forth an *Elegit* to have Execution of the Lands of the Recogniſor: And if the Sheriff return that the Recogniſor is dead, then the Executors ſhall ſue a ſpecial *Scire facias* againſt the Heir of the Recogniſor, and againſt thoſe who are Tenants of the Lands which he had at the Day of the Recogniſance made; and that Writ of *Scire facias* ſhall recite and ſhew, that the Executors who ſue the Writ have elected to have the Moiety of the Lands which the Recogniſee had at the making of the Recogniſance; and the Form of the Writ is,

The King to the Sheriff, &c. *Whereas* I. *of* W. (ſuch a Day and Year) *&c. in our Chancery acknowledged himſelf to owe to* N. *lately Duke of* Lancaſter, *one hundred Pounds, which he ought to have paid to him on the Feaſt of*, &c. *then next coming, as appears*, &c. *and hath not yet paid the ſame to him, as it is ſaid, and* W. B. *and* C. *Executors of the ſaid late Duke deceaſed, according to the Statute thereof ſet forth have choſen to be delivered to them for the ſaid one hundred Pounds, all the Chattels, and the Moiety of the Land of him the ſaid* I. *of* W. *to be holden according to the Form of the Statute aforeſaid; Wherefore we commanded you, that you ſhould give Notice to the ſaid* I. *of* W. *that he ſhould be in our Chancery* (ſuch a Day) *next following, whereſoever*, &c. *to ſhew if he had or knew any Thing to ſay for himſelf, why all his Chattels and the Moiety of his Land ought not to be delivered to the ſaid Executors for the ſaid one hundred Pounds, according to the Form of the Statute aforeſaid; and you have returned to us, that the ſaid* I. *of* W. *is dead: We command you, that you give Notice to the Heir of him the ſaid* I. *of* W. *and alſo to the Tenants of the Land which was his the ſaid* I.*'s of* W. *on the Day of the Recogniſance aforeſaid, that they be in our Chancery*, &c. *next coming, whereſoever*, &c. *to ſhew if they have or know any Thing to ſay for themſelves, why the Moiety of the Land which they hold of the Land aforeſaid, ought not to be delivered to the ſaid Executors for the ſaid one hundred Pounds, according to the Form of the Statute aforeſaid; and have there the Names of thoſe by whom*, &c. *Witneſs*, &c.

(*a*) *Note*; If the one be in by Deſcent, and within Age, Execution ſhall tarry againſt all. 24 *Ed.* 3. 56. 29 *Aſſ.* 37. and the others in a *Scire facias* againſt them may ſhew this. 29 *Ed.* 3. 39. adjudged, and affirmed in Error, where the Conuſor died, his Heir being within Age, and the others warned by *Scire facias.*

14 A. 7. 16. 15 A. 7. 16. And thereby appeareth, that if a Man be bounden in a Recogniſance, *&c.* although that the Recogniſee dieth, yet his Executors cannot ſue forth an *Elegit* to have Execution of the Recogniſance within the Year after the Day of Payment, without ſuing forth a *Scire facias* againſt the Recogniſor, *&c.* But againſt the Heir of the Recogniſor or the Tertenants, the Recogniſee or his Executors ought to ſue forth a *Scire facias*, *&c.* otherwiſe if they be ouſted, *&c.* by ſuch Execution of their Lands, they ſhall have an Aſſiſe of Novel Diſſeiſin, *&c.*

Writ de Idemptitate nominis.

THE Writ *de Idemptitate nominis* lieth, where a Man is ſued in a perſonal Action, and upon the *Capias* or *Exigent* awarded, another Man who beareth the ſame Name, is arreſted by Force of the Writ, then he who is ſo arreſted ſhall ſue forth this Writ of *Idemptitate nominis*; and this Writ ſhall be directed ſometimes to the Eſcheator, if he or his Goods be arreſted by him, or unto the Sheriff, if he be vexed or moleſted by him; and the Form of the Writ is ſuch: E

[268.] (*a*) *The King to his beloved* I. *of* S. *his Eſcheator in the County of* Lincoln, *greeting: Whereas lately (as we have received Information)* I. *of* R. *of* London, *Taverner, now deceaſed (as it is ſaid) for that he came not before our Juſtices of*

(*a*) *Note*; In the Caſe of *Wilſon* and *Stubbs*, it was reſolved, that if in a Writ againſt *J. S.* *J. S.* the elder is taken after Judgment, it ſhall be intended *J. S.* the elder: And yet after Judgment *J. S.* the younger, if taken, cannot have an *Idemptitate nominis*, but falſe Impriſonment; but ſee the Precedents *contra*, *viz.* *P.* 36 *H.* 6. *Rot.* 48. *John Skeyt*'s Caſe, *M.* 20 *H.* 7. *Rot.* 136. *Fuller*'s Caſe. See 5 *Ed.* 4. 48. otherwiſe if it was a *Capias utlagatum*, for there the King is intereſted. 20 *Ed.* 3. *Brief* 683.

What ſhall be ſaid the ſame Name, or not. If *J. de D.* be outlawed, and *J. D.* taken, he ſhall not have an *Idemp' nominis*, but Treſpaſs; *per Culpeper*; and ſee there a Writ brought againſt *J. de D.* and Proceſs continued againſt *J. D.* and a Protection purchaſed by *J. D.* the Proceſs ſhall be amended by the Statute 14 *Ed.* 3. but the Protection was not allowed *licet conſtabat eſſe eandem Perſonam*; but otherwiſe had the Protection been purchaſed before the Writ. 11 *H.* 4. 70.

If a Writ be againſt *J. G.* and the Sheriff takes *J. C.* he ſhall not have an *Idemp' nominis*; but if a Writ comes againſt *J. G. de B.* and the Sheriff takes *J. G. de C.* he ſhall have it. 1 *H.* 5. 5. *b.* and by *Litt.* he may have Treſpaſs, if he will. 2 *Ed.* 4. 7.

Note well; If *J. C.* Butcher, be outlawed, and *J. C* Husbandman, is taken by *Capias utlagatum*, he ſhall be diſcharged by Plea; for it affirms the Outlawry good againſt *J. C.* Butcher; but if Treſpaſs or Debt be brought againſt *J. C. de D.* Butcher, and there comes *J. C. de B.* Husbandman, and appears and pleads, and he is outlawed after Judgment: Now if he be taken he ſhall not avoid it by ſaying, that *J. C. de B.* Butcher, againſt whom the Action was brought, and *J. C. de B.* Husbandman, who now appears, are divers Perſons, and that he is not the ſame Perſon againſt whom the Original was purchaſed; but he ſhall ſay further, that he did never appear upon that Original; for if he has appeared and pleaded, he is as well liable, as if he were the ſame Perſon. But by *Paſton*, he ſhall not have ſuch an Iſſue in Avoidance of a Record, no more than in Avoidance of a Fine levied in another Name; I ſhall not ſay I am another Perſon, or that I never appeared. 19 *H.* 6. 58. And it ſeems without ſuch ſpecial Shewing, he ſhall not come and ſay, that he is not the ſame Party, or that he did not appear, without ſhewing that the other of the ſame Name did. *Quære.* 2. It ſeems that the other may ſay, that he whom he alledges did never appear. See 10 *Ed.* 4. 16. 2 *H.* 6. 19. where one came in by *Capias pro Fine*, and ſaid that he never did appear, *&c.* and it was not allowed; but he afterwards ſhewed, that another of the ſame Name did appear, *abſque hoc*, that he himſelf did ever appear; and it was held good. 22 *H.* 6. 18.

the Bench to anſwer to R. *for the Time wherein he was Receiver of the Money of him the ſaid* R. *was put in Exigent in our Huſting of* London *to be outlawed, and for that Reaſon was outlawed on* Monday *next after the Feaſt of Saint* Peter *in the Chair, in the tenth Year of our Reign; and now we underſtand on the Behalf of* I. *of* R. *of* London, *Baker, that although he is not the ſame* I. *of* R. *who was outlawed at the Suit of him the ſaid* R. *neither have any Goods and Chattels, which were the ſame outlawed Perſon's, come to his Hands; nevertheleſs you, becauſe of the Identity of ſuch Name and Surname of* I. *of* R. *pretending him the ſaid* I. *of* R. *of* London, *Baker, to be the ſame* I. *of* R. *of* London, *Taverner, who was ſo outlawed, intend to ſeize into our Hand the Goods and Chattels of the ſame* I. *of* R. *of* London, *Baker, by Colour of the ſaid Writ to take into our Hand of the Goods and Chattels which the ſaid* I. *of* R. *of* London, *Taverner, had in your Bailiwick on the Day of the Proclamation of the ſaid Outlawry, and many Ways unjuſtly diſquiet him upon that Occaſion, to the great Damage and Grievance of him the ſaid* I. *of* R. *of* London, *Baker; whereupon he hath beſought us for a Remedy to be provided for him by us; And becauſe we will not that he the ſaid* I. *of* R. *of* London, *Baker, be unduly aggrieved, we command you, that if by Inquiſition or other Means it ſhall lawfully appear to you, that the ſaid* I. *of* R. *of* London, *Baker, is not the ſame* I. *of* R. *of* L. *Taverner, who was ſo outlawed, nor that any Goods or Chattels which were his the ſaid outlawed Perſon's on the Day of Proclamation of the ſaid Outlawry, came to his Hands, as is ſaid, then wholly ſurceaſe the taking of the Goods and Chattels of the ſaid* I. *of* R. *of* L. *Baker: Provided always, that you anſwer to us for all the Goods and Chattels which the ſaid* I. *of* R. *of* L. *Taverner, had in your Bailiwick on the Day of Proclamation of the Outlawry aforeſaid (if any there were) as it is juſt. Witneſs,* &c.

A And ſo if a Man be diſtrained by Proceſs out of the Exchequer for to account, *&c.* for another Perſon who hath the ſame Name which he hath, then he ſhall ſue that Writ to the Barons of the Exchequer and to the Treaſurer; and the Writ ſhall be ſuch:

The King to his Treaſurer and Barons of the Exchequer, greeting: J. Clerke *of* N. *hath ſhewed unto us, that whereas one* J. Clerke, *on the Day when he died, was bounden in a certain Account to be rendred to us of the Iſſues of the Paſſage of* Green Caſtle, *which ſaid* J. Clerke *is dead, and was called, while he lived,* J. Clerke *of* A. *as it is ſaid; and becauſe the ſaid* J. Clerke *of* N. *hath the ſame Name and Surname as the ſaid* J. Clerke *of* A. *you unjuſtly cauſe him many Ways to be diſquieted, and to render to us an Account of the Iſſues aforeſaid, as we have received Information; whereupon the ſaid* J. Clerke *of* N. *hath beſought us, that we will aſſiſt him with a Remedy in this Behalf; We, as well for ourſelves as for the ſame* J. Clerke, *willing to be done that which ſhall be juſt, command you, that if by any* Memoranda *of the ſaid Exchequer, or by Inquiſition thereof (if it ſhall be neceſſary) to be taken, you ſhall find that he the ſaid* J. C. *of* A. *had our Commiſſion of that Office, and received the Iſſues thereof by virtue of ſuch our Commiſſion, or in other Manner, and that he the ſaid* J. Clerke *of* N. *had not ſuch our Commiſſion, nor in any thing intermeddled therewith, and that he the ſaid* J. Clerke *of* N. *becauſe of the* (a) *Identity of his Name and Surname, and for no other Cauſe,*

(a) *Note*; The *Idemptity* here is of both Names; and ſee *Dyer* 5. That it does not lie of two Names of Baptiſm, but only of Surnames.

was impeached before you, then cauſe him the ſaid J. Clerke *of* N. *to be diſcharged and quiet of rendring to us an Account of the Iſſues aforeſaid at the ſame Exchequer* (*a*), *as it ſhall be juſt, making due Proceſs againſt the ſaid* J. C. *of* A. *if he be living, or againſt his Heirs, Executors or the Tenants of the Lands and Tenements of him the ſaid* J. C. *of* A. *if he ſhall be dead, as the Law requires. Witneſs*, &c.

27 H. 8. 1. And if a Man be taken by a *Capias utlagatum*, he may ſue forth a Writ *de* B
17 Ed. 3. 9. *Idemptitate nominis* in the Chancery directed to the Juſtices of the Common
Pleas, if the Proceſs be ſued there, or unto the Juſtices of the King's Bench,
if the Proceſs be there, commanding them to make Inquiry, *&c.* as afore is
13 H. 4. 12. ſaid, *&c.* ſo as this Writ ſeemeth but as a Commiſſion to make Inquiry, and
to know the Truth; and upon that Writ directed to the Juſtices, they ſhall
award a Writ unto the Sheriff to (*b*) make the Inquiry, *&c.* but if a Man be
27 H. 8. 1. outlawed in the Common Pleas, and taken by *Capias*, he may come into the
14 Ed. 3. Br. 271. Common Pleas and pray a Writ of Inquiry, whether he be the ſame Perſon,
without ſuing the Writ *de Idemptitate nominis.*

And if an *Exigent* be to be awarded againſt one, if one who hath the ſame
Name come, and ſaith that he is ready to anſwer, then the Plaintiff (*c*) may
14 H. 4. 27. ſay that he is not the ſame Perſon, and then the Plaintiff ſhall put a Diverſity
of the Names, and the ſame ſhall be entred, and then the *Exigent* ſhall be
awarded according to that Difference which the Plaintiff hath made.

9 H. 4. 3. (*d*) At the *Exigent* returned the Defendant appeareth by *Superſedeas*, and
the Plaintiff ſaith, that he that appeareth is not the ſame Perſon: And the
Opinion of *Hanke* was, that he ſhall be put to his *Idemptitate nominis*, and
ſhall not that Way avoid the Outlawry.

And if an *Exigent* be to be awarded upon an Indictment, if one cometh and C
ſaith, that he hath the ſame Name as he againſt whom the Proceſs upon the
Indictment is awarded, and prayeth that the King's Attorney may put a Dif-
ference of their Names; the ſame ſhall not be done, for that ſhould change
the Indictment, becauſe the Proceſs ought to be made according to the In-
dictment; and if he be grieved by the Proceſs, he muſt ſue forth the Writ
[269.] *de Idemptitate nominis*, and ſhall not have other Remedy, *&c.* And he may
have that Writ to the Juſtices of the Peace, if they award Proceſs of Utlagary
upon Indictments taken before them, and alſo to the Juſtices of Gaol-delivery,
as appeareth by (*e*) the Regiſter, *fol.* 195, 196.

(*a*) So *Note*; The Tertenants are charged to account, and the Land is charged, although that no Judgment was given *pro Rege, viz. in Defectu Execution'* J. C. *de* D. See *Dyer* 225. Sir *Will. St. Loe's* Caſe.

(*b*) Or alledges that he is named *J. S.* and not *J. R.* as the Writ ſuppoſes; and thereupon he ſhall have a *Scire facias* againſt the Plaintiff in the Suit, *&c.* See 1 *H.* 5. 5.

(*c*) And if he does not ſay ſo in the Writ, it ſhall abate. 18 *Ed.* 2. *Brief* 834.

(*d*) But if there be a Diverſity of Names in this Caſe, on ſuch Plea, *&c.* an *Exigi de novo* ſhall iſſue againſt the other; *per Hull*, 14 *H.* 4. 27. and ſo in a *Præcipe, Summons ad warrantizand'*, *&c.* 19 *H.* 6. 58.

(*e*) *Note*; At the *Pluries Capias* one appeared who had the ſame Name, and the Plaintiff ſaid he was not the ſame Perſon; and for that he had not put the Diverſity of the Names in his Writ, it abated. 22 *Ed.* 4. 14. 8 *Ed.* 3. 19. 18 *Ed.* 2. *Brief* 834.

Writ

Writ de Homagio reſpectuando.

A THE Writ of Reſpite of Homage lieth, when the Heir comes of full Age who holdeth of the King *in Capite*, and ought to ſue his Livery, then the Order is, that he firſt do Homage to the King, and thereupon to have his Writ of Livery to the Eſcheator; but the King of Grace and Favour may reſpite his Homage as he pleaſeth: And thereupon he ſhall have a Writ unto the Eſcheator teſtifying the ſame, and commanding him to deliver him Seiſin of the Lands; and the Writ ſhall be ſuch (*a*):

The King to his beloved, &c. *his Eſcheator*, &c. *Know you*, *that we have reſpited the Homage of* I. *the Siſter and Heir of* I. *the Son of* T. *of* B. *deceaſed*, *due to us for all the Lands and Tenements which the aforeſaid* I. *her Brother held of us in Chief*, *on the Day when he died*, *until the Feaſt of Saint* Michael *next coming*, *and have rendred unto him thoſe Lands and Tenements: And therefore we command you*, *that having received Security*, &c.

(*b*) *Writ* de Hæretico comburendo.

B NOTE, It appeareth by *Britton* in his Book, that thoſe Perſons ſhall be burnt who feloniouſly burn others Corn, or others Houſes, and alſo thoſe who are Sorcerers or Sorcereſſes; and Sodomites and Hereticks ſhall be burnt; and it appeareth by that Book, *lib.* 1. *cap.* 17. that ſuch was the Common Law. (*c*) But note, That the Perſon who ſhall be burnt for Hereſy ought to be firſt convict thereof by the Biſhop who is his Dioceſan where he dwelleth, and abjured thereof, and afterwards, if he relapſe into that Hereſy or any other, and thereof be condemned in the ſaid Dioceſe, then he ſhall be ſent from the Clergy to the ſecular Power, to do with him as it ſhall pleaſe the King, &c. And then it ſeemeth the King, if he will, may pardon him the ſame; and the Form of the Writ is ſuch:

C *The King*, &c. *to the Mayor and Sheriffs of* London, *greeting: Whereas the venerable Father* Thomas *Archbiſhop of* Canterbury, *Primate of all* England, *and Legate of the Apoſtolic See*, *with the Conſent and Aſſent of the Biſhops and his*

(*a*) But if the Lord takes Homage of the Heir within Age, he is thereby out of Ward, *per Bro. Homage* 9. *vide Ant.* 142. *con.* and ſo the Law ſeems to have altered in this Point.

(*b*) *Note*; Until the Time of *H* 4. no Perſon was put to Death for Opinions in Religion in *England:* See the Reaſon hereof in *Taylor's Liberty of Propheſying*, *p* 1025. *ſect.* 13. *Baker's* Hiſtory 345. and *Sanderſon's* Hiſtory 10.

See the Caſes of *Anne Knell* and *Anne Aſkew*, burnt 4 *Ed* 6. for denying Chriſt to have taken his Fleſh of the Virgin *Mary*. *Heylin's* Hiſtory 88, 89. and *Burnet's* Hiſtory of the Reformation, *firſt Part* 27. where the Temporal Courts adjudged what was Hereſy. See alſo good Matter in *Petit*, *Brook* 458. and 13 *Co.* 59. *Mutton's* Caſe.

(*c*) See 12 *Co.* 56, 57, 93. That by the Common Law no Biſhop could convict of Hereſy as to Loſs of Life, but only as to Penance & *pro ſalute Animæ:* But in the Caſe of Life, the Conviction by the Common Law ought to have been before the Archbiſhop in Convocation.

See *Petit's* Collections 72, 73. the Writs and Proceſs for burning *Barthol. Legate* and *Anne Wightman.* Temp. Jac. 1.

Brothers the Suffragans, and alſo of the whole Clergy of his Province (*a*) *in his Provincial Council aſſembled, the Orders of Law in this Behalf requiſite being in all Things obſerved, by his definitive Sentence pronounced and declared* W. Sawtre *(ſometime Chaplain condemned for Hereſy, and by him the ſaid* W. *heretofore in Form of Law abjured, and him the ſaid* W. *relapſed into the ſaid Hereſy) a manifeſt Heretic, and decreed him to be degraded, and hath for that Cauſe really degraded him, from all clerical Prerogative and Privilege, and hath decreed him the ſaid* W. *to be left, and hath really left him, to the Secular Court, according to the Laws and canonical Sanctions ſet forth in this Behalf, and holy Mother the Church hath nothing further to do in the Premiſſes: We therefore, being zealous for Juſtice, and a Lover of the Catholic Faith, willing to maintain and defend holy Church, and the Rights and Liberties thereof, and (as much as in us lies) to extirpate by the Roots ſuch Hereſies and Errors out of our Kingdom of* England, *and to puniſh Heretics ſo convicted with condign Puniſhment; and being mindful that ſuch Heretics convicted in Form aforeſaid, and condemned according to the Law Divine and Human by canonical Inſtitution, and in this Behalf accuſtomed, ought to be burnt with a burning Flame of Fire, we command you, moſt ſtrictly as we can, firmly injoining, that you commit to the Fire the aforeſaid* W. *being in your Cuſtody, in ſome publick and open Place within the Liberties of the City aforeſaid, before the People publickly, by reaſon of the Premiſſes, and cauſe him really to be burnt in the ſame Fire, in deteſtation of this Crime, and to the manifeſt Example of other Chriſtians: And this you are by no Means to omit, under the Peril falling thereon. Witneſs*, &c.

D (*b*) And by that Writ it appeareth, that a Man ought to be convicted of the Hereſy by the Archbiſhop and all the Clergy of that Province, and abjured for the ſame, and afterwards anew convicted and condemned by the Clergy of the ſame Province, and that in their general Council of Convocation. But now by the Statute of *Hen.* 4. *cap.* 15. it is enacted, That every Biſhop in his Dioceſe may convict a Man of Hereſy, and abjure him, *&c.* and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, *&c.* And that the Sheriff or other Officer ought to do the ſame by the Precept of the Biſhop, and without any Writ from the King to do the ſame. And that is the Cauſe (as it ſeemeth) that that Writ is not put into the new Regiſters, becauſe that Writ ought not at this Day to be ſued forth, but is as it were void by Reaſon of the ſaid Act.

(*c*) But now by the Statute made *Anno* 25 *H.* 8. *c.* 14. that Statute which was made *Anno* 2 *H.* 4. is repealed and made void. And now it is enacted by this late Statute, that he who is abjured for Hereſy, and afterwards falleth into

(*a*). See *Bro. Hereſy* 1. That if one will abjure a ſecond Hereſy, yet he ſhall be burnt; and that altho' the ſecond Hereſy be in another Point of Faith. See *Inſtit. Juris Canon.* 144, 145.

(*b*) See the Book of *Entries* Tit. *Indictment*, an Indictment before Commiſſioners for Hereſy, a *Capias* awarded, and the Party delivered to the Ordinary.

(*c*) See the Statutes, and *note* by 25 *H.* 8. *c.* 14. the Stat. 2 *H.* 4. is repealed; and by 1 *Eliz. c.* 12. the Statute 5 *R.* 2. *c.* 5. and 2 *H.* 5. *c.* 7. and 25 *H.* 8. *c.* 14. are repealed; and by 1 & 2 *Ph. & Mar. c.* 6 the Statutes 5 *R.* 2. 2 *H* 4. and 2 *H.* 5. are revived; and by Statute 1 *Eliz. c.* 1. the Stat. 1 & 2 *P. & M. c.* 6. and 5 *R.* 2. 2 *H.* 4. 2 *H* 5. are all repealed; ſo that this now ſtands as at Common Law before thoſe Statutes.

And *Note*; By the Statute 29 *Car.* 2. *c.* 9. this Writ *de Hæretico comburendo* is aboliſhed. *Laus Deo.*

Relapſe, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay Power to be burnt, without the King's Writ firſt obtained for to burn him, as appeareth by the ſaid Statute of [270.]
25 *H.* 8. *cap.* 14. more at large.

Writ upon the Statute of Marlebridge *for a Fine for Non-fair pleading.*

A THE Writ upon the Statute of *Marlebridge* for not fair Pleading lieth, where the Sheriff or other Bailiff in his Court will take a Fine of the Party, Plaintiff or Defendant, becauſe he did not plead fairly, *&c.* And the Writ ſhall be directed to the Sheriff himſelf, or Bailiff, or him who will demand ſuch Fine; and it is a Prohibition to him, commanding him that he do not demand ſuch Fine; and it may be ſued by the whole Hundred, or by all the County together, where he will require ſuch Manner of Fine of them; and the Writ is ſuch:

B *The King to the Sheriff,* &c. *Whereas it is provided by the Common Council,* &c. *that neither in the Circuits of Juſtices, nor in Counties, Hundreds, or in Courts Barons, from thenceforth any Fines ſhall be taken of any Man for fair Pleading, nor ſo that any Occaſion ſhall be; We command you, that for the Time to come you do not exact, or cauſe to be exacted of* W. *ſuch Fine, againſt the Form of the Proviſion aforeſaid; And the Diſtreſs, if any,* &c.

And for the Hundred the Writ ſhall be ſuch: *We command you, that for the Time to come you do not exact, or cauſe to be exacted from the Commonalty of the Hundred of* I. *ſuch Fine, againſt the Form,* &c.

C And by the Rule in the Regiſter it may be againſt every other Man who will diſtrain for ſuch Fine, and he may have an *Alias* and a *Pluries*, and an Attachment upon the ſame: And if after the firſt Writ of Prohibition delivered he diſtrain for ſuch Fine, then the Party who is diſtrained may ſue forth an Attachment againſt the Sheriff or Bailiff, or him who diſtraineth him; and the Form of the Attachment is ſuch:

The King to his Coroners in the County of Lincoln, *greeting: If* A. *ſhall make you ſecure,* &c. *then put,* &c. B. *our Sheriff, or our Sheriff of the County aforeſaid, that he be before our Juſtices,* &c. *to ſhew wherefore, whereas it is provided by the Common Council,* &c. (as above) *of any Man for fair Pleading, nor ſo that any Occaſion ſhall be, the ſaid Sheriff, (or the ſaid Bailiff) hath diſtrained the ſaid* A. *for ſuch Fine to be paid in the County aforeſaid, againſt the Form of the Proviſion aforeſaid, and againſt our Prohibition; and have there,* &c. *and in the mean Time cauſe the Beaſts of him the ſaid* A. *taken upon that Occaſion, to be delivered. Witneſs,* &c.

But note, That he may ſue forth that Writ of Attachment againſt the Sheriff, or other, altho' that he never ſueth forth any Writ of Prohibition before directed to the Sheriff or Bailiff; but then he ought for to be diſtrained for that Fine; for the Statute in itſelf is a Prohibition to the Sheriff, and to all others, that they do not diſtrain for ſuch Fine for fair Pleading; but if the Sheriff, or

Attachment upon a Prohibition. Br. 13. Vide 9 H. 6. 61. & 19 H. 6. 54. Aſcue.

other, demand ſuch Fine, and doth not diſtrain for the ſame, then he cannot have a Writ of Attachment for ſuch Demand made, becauſe he is not damnified by the Demand, *&c.*

Grants made by the King expreſſed and contained in the Regiſter, to be remembred.

D THE *King to the Bailiffs and honeſt Men of the Town of* P. *greeting: Know you, that of our eſpecial Favour we have granted to you in Aid of paving the ſaid Town, that from the Day of the making theſe Preſents, until the End of five Years next following, you may take in the ſaid Town the Cuſtoms underwritten, to wit, For every Carriage on Horſeback,* &c. *And therefore we command you, that you take the ſaid Cuſtoms until the End of the ſaid Term, as before is ſaid; but the ſaid Term of five Years being compleated, the ſaid Cuſtoms ſhall abſolutely ceaſe and be taken away. In Witneſs,* &c.

Grant of a Stewardſhip.

E THE *King,* &c. *Know you, that we have granted to our beloved and faithful* W. *of* H. *the Office and Government of the Stewardſhip of,* &c. *with all Things belonging to the ſaid Office, during our Pleaſure: And therefore we command you, that you obey, anſwer, and faithfully attend him the ſaid* W. *in all Things as Steward. In Witneſs whereof,* &c.

Grants of Letters Patent.

F SEE in the Regiſter notable Forms of Grants of Letters Patent made by the King in divers Manners, eſpecially among the Writs of *Ad quod Damnum,* and alſo after the Writs *de Corrodio habendo.* And there is a Patent made, *Of the Cuſtody of the King's Foreſt, in recompence of a certain Sum granted to any one by the King for his Life.*

And other Patents there made upon Indentures between the King and others, upon a borrowing of Money by the King, by which Patents the King doth grant to hold and keep Covenant, *&c.*

The Grant of the King of the firſt Benefice which ſhall happen void is ſuch:

The King to his Chancellor who now is, or who ſhall be ſo for the Time being, or Keeper of his Great Seal, greeting: We heartily deſiring the Promotion of our beloved Clerk A. *for his good Service done, as well to Lord* Edward *ſome time King of* England *our Grandfather, as for us, and willing to follow him (from the* [271.] *Conſideration premiſed) with our gracious Favour, Will that he the ſaid* A. *be preſented to the firſt Eccleſiaſtical Benefice that ſhall become void, exceeding the Taxation of twenty Marks, which ſhall belong to our Preſentation, and which he ſhall*

ſhall think fit to accept: And therefore we command you, that you cauſe him the ſaid A. *to have our Letters of Preſentation to the firſt Eccleſiaſtical Benefice that ſhall become Vacant, which ſhall ſo belong to us, and which he ſhall think fit to accept, under our Great Seal in Form aforeſaid. In Witneſs whereof*, &c. *Witneſs*, &c.

But ſuch Grants are not in Uſe at this Day.

A A Grant of the King to one of his Chaplains of a yearly Penſion out of the Exchequer, until he be promoted unto a Benefice, is thus:

The King to all to whom, &c. *greeting: We regarding the grateful and laudable Services which our beloved Clerk* A. *hath before theſe Times willingly done for us, whereof we are certainly informed, as well by our beloved and faithful* W. *as by others our faithful Subjects, hoping that in our Buſineſs to be done, from the Purity of his Affection and Benevolence he will continue in ſucceſſive Acts for the Future, and willing to follow him with our gracious Reward, have granted to him a certain annual Penſion of twenty Marks, to be received every Year at our Exchequer, at the Feaſts of* Eaſter *and St.* Michael *by equal Portions, until he ſhall by us be provided within our Realm of* England *of an Eccleſiaſtical Benefice which he ſhall think fit to accept. In Witneſs*, &c. *Witneſs*, &c.

B There is another Grant in the Regiſter, *fol.* 295. made by the King to one, to give him Authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, *&c.* and to grant Pardon to them; and the Grant is ſuch:

The King to all and ſingular, &c. *to whom*, &c. *greeting: Know ye, that we fully confiding in the approved fidelity and provident Circumſpection of our beloved and faithful* Anthony Lucy, *have given to him the ſaid* Anthony, *by the Tenor of theſe Preſents, full Power of receiving to our Faith and Peace, the Men of the Parts of* Galloway *in* Scotland, *not being in our Faith and Peace, and others who adhere, or have adhered to the ſaid* Scots *againſt us, and with them were Enemies againſt us, and who are willing to come to our Faith and Peace, and whom he ſhall ſee fit to be admitted to our Faith and Peace; and in our Name to make Letters of Pardon of ſuch Adhering and Enmity, and alſo of ſuch Admiſſion to our Peace, to thoſe Men for their Security in this Behalf, to be accounted firm and free whatſoever the ſaid* Anthony *ſhall do in our Name in the Premiſſes. In Witneſs*, &c. *Witneſs*, &c.

C There is another Grant made unto one of the Cuſtody of a Caſtle, and the Ammunition therein, for what Time it ſhall pleaſe the King, and a Writ thereupon directed to him who had the Cuſtody thereof before, to deliver to him the Caſtle, and the Implements and Things appertaining to the ſame.

And you may ſee there the Patents made to Sheriffs to be Sheriffs to the Counties, and alſo the Patents made to the Eſcheators of the Counties, and alſo the Writs to the old Sheriffs and Eſcheators to deliver unto them the Rolls and Writs, *&c.*

D And Letters Patent of Attendants unto Archbiſhops, Abbots, and all others, to be Attendants unto them in thoſe Things which do appertain to their Office. The Form of Nomination to be made by the King to an Abbey or other Perſon. Of one to be Vicar, and that the Abbot do preſent him over to the Ordinary. And alſo the Form of Revocation made by the King of that Nomination. And alſo the Form of the Writ which the King ſends to the Ordinary to admit of that Revocation, and to admit another Perſon by another Nomination. All theſe appear in the Regiſter, *fol.* 302.

And divers other Preſentations made by the King, and alſo Revocations of his Preſentation; and alſo Nominations made by the King in his own Right, or in the Right of others, are there in the Regiſter; and Grants made by the King of Donatives, and the Writs directed unto the Sheriff to put them in Poſſeſſion; and Writs there to the Ordinary, to aſſign unto a Prebendary *A Stall in the Choir, and a Place in the Chapter,* who hath the Prebend by the King's Collation; and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in Poſſeſſion as Incumbents, *&c.*

And many Forms of Writs made to Abbots or Biſhops, to have yearly Penſions for his Chaplains, until they are promoted to Benefices: And the Writ to the Chancellor to preſent in the King's Name ſuch a one, the King's Chaplain, to the firſt Avoidance of any Benefice which ſhall be void, which appertains to the King; and alſo Grants by the King to receive a yearly Penſion out of the Exchequer.

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And ſo endeth this preſent Treatiſe, called, New Natura Brevium, *which Book fully declares the Natures of the Original Writs contained and expreſſed in the Regiſter.*

THE

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